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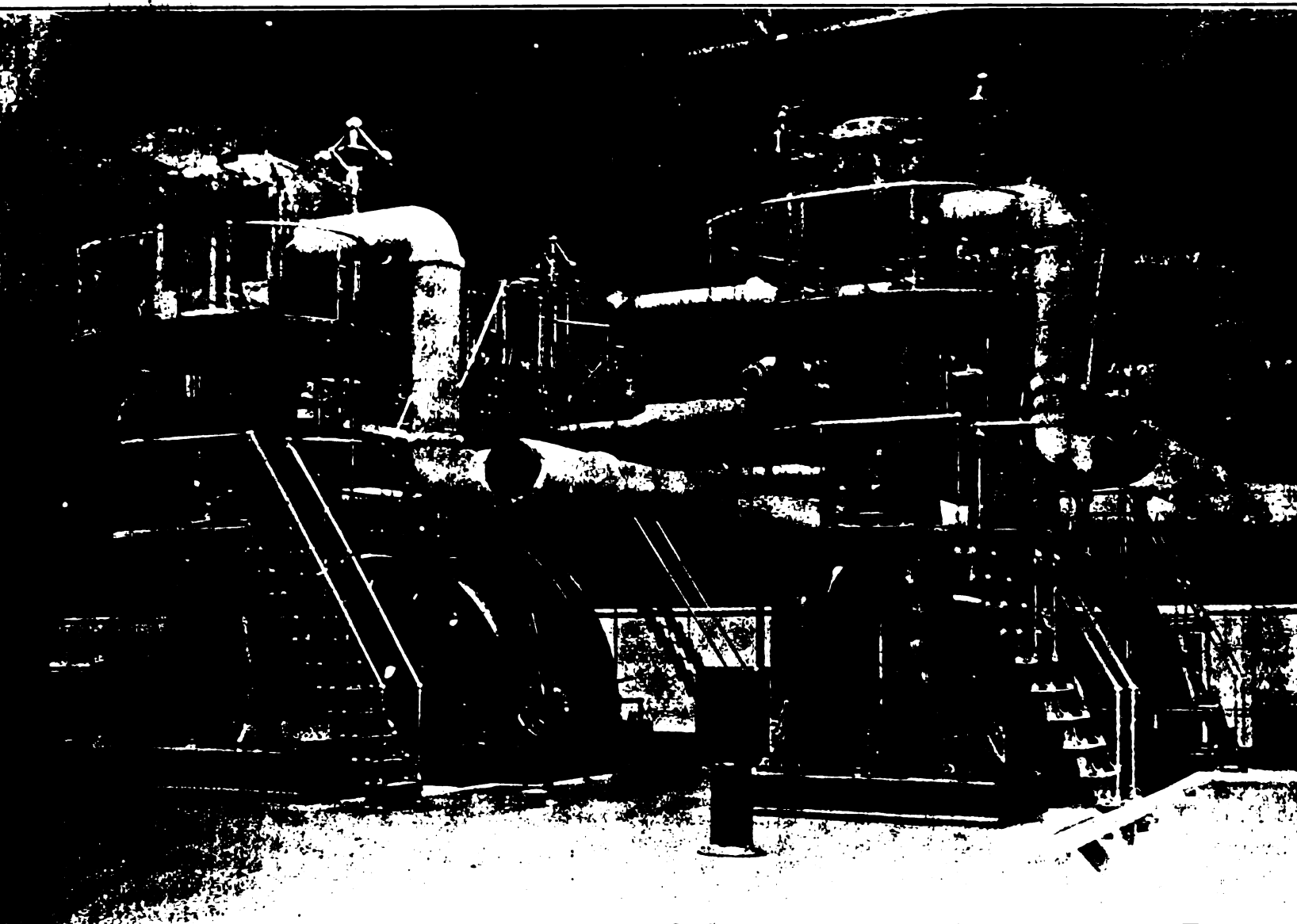
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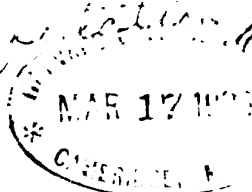
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CONSTITUTIONALITY OF THE GROSSCUP PLAN.

Is in Harmony With Our Institutions and in Consonance With the Principles of Our Jurisprudence.

BY JOHN B. DAISH.

FOLLOWING is a brief on the constitutionality of the Grosscup plan for the amendment of the Interstate Commerce Law:

Nature of the Government of the United States.

The Government of the United States is one of enumerated powers; while supreme within its own sphere, it is a government of limited jurisdiction and specific functions, possessing no other powers but such as are given to it expressly or by necessary intendment, by the Constitution. (Cons. U. S., 10 Amend.; Sutherland Notes to Cons. U. S., p. 678; Pacific Ins. Co. vs. Soule, 7 Wall. 444; Martin vs. Hunter, 1 Wheat. 326; McCulloch vs. Maryland, 4 Wheat. 406; Houston vs. Moore, 5 Wheat. 1; Hepburn vs. Griswold, 8 Wall. 611; Collector vs. Day, 11 Wall. 124; United States vs. Harris, 106 U. S., 629; Gilman vs. Philadelphia, 2 Wall. 725; United States vs. Illinois, etc., Ry. Co., 154 U. S. 239; see also Bryce Am. Com., Ch. IV.)

While the Government of the United States is one of enumerated powers, it must be noted that in this respect the Federal Government differs from that of the several States in the Union. In the States the respective constitutions are not grants of power, but apportion and impose restrictions upon the powers which the States inherently possess. (Cooley, Cons. Lim., p. 11; Bryce Am. Com., Ch. XXXVI.)

The Powers of Congress.

1. The powers of Congress and the limitations thereof are specifically enumerated in the Constitution, and are legislative, being confined within certain prescribed limits. (Cons. U. S., *passim*; Kilbourn vs. Thompson, 103 U. S. 168; Cooley Cons. Lim., p. 11; Sutherland Notes U. S. Cons., pp. 76-77.)

The powers of the legislatures of the several States

differ from that of the Congress, in that full and complete legislative powers exist in the legislatures.

In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specially defined legislative powers, but is intrusted with the general authority to make laws at discretion. (Cooley, Cons. Lim., p. 126; see also Cooley, Cons. Lim., pp. 124-126, 241-242, 236-240.)

In every sovereign State there resides an absolute and uncontrolled power of legislation. In Great Britain this complete power rests in the Parliament; in the American States it resides in the people themselves as an organized body politic. But the people, by creating the Constitution of the United States, have delegated this power as to certain subjects, and under certain restrictions, to the Congress of the Union; and that portion they cannot resume, except as it may be done through amendment of the National Constitution. For the exercise of the legislative power, subject to this limitation, they create, by their State constitution, a legislative department upon which they confer it; and granting it in general terms, they must be understood to grant the whole legislative power which they possessed, except so far as at the same time they saw fit to impose restrictions. While, therefore, the Parliament of Britain possesses completely the absolute and uncontrolled power of legislation, the legislative bodies of the American States possess the same power except, *first*, as it may have been limited by the Constitution of the United States; and, *second*, as it may have been limited by the constitution of the State. * * * The Government of the United States is one of *enumerated* powers; the governments of the States are possessed of all the general powers of legislation. When a law of Congress is assailed as void we look in the National Constitution to see if the grant of specified powers is broad enough to embrace it; but when a State law is attacked on the same

ground, it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the State we are able to discover that it is prohibited. We look in the Constitution of the United States for *grants* of legislative power, but in the constitution of the State to ascertain if any *limitations* have been imposed upon the complete power with which the legislative department of the State was vested in its creation. Congress can pass no laws but such as the Constitution authorizes either expressly or by clear implication; while the State legislature has jurisdiction of all subjects on which its legislation is not prohibited. (Cooley, Cons. Lim., pp. 241-242.)

2. The power of Congress, in the matter of interstate commerce, is plenary and supreme.

The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. (Cons., Art. 1, sec. 8, par. 3.)

Gibbons vs. Ogden, 9 Wh. 1; Brown et als. vs. State of Maryland, 12 Wh. 419; Wilson et al. vs. Black Bird Creek Marsh Company, 2 Pet. 245; Worcester vs. The State of Georgia, 6 Pet. 515; City of New York vs. Miln, 11 Pet. 102; United States vs. Coombs, 12 Pet. 72; Holmes vs. Jennison et al., 14 Pet. 540; License Cases, 5 How. 504; Passenger Cases, 7 How. 283; Nathan vs. Louisiana, 8 How. 73; Mager vs. Grima et al., 8 How. 490; United States vs. Marigold, 9 How. 560; Cowley vs. Board of Wardens of Port of Philadelphia, 12 How. 299; The Propeller Genesee Chief et al. vs. Fitzhugh et al., 12 How. 443; State of Pennsylvania vs. The Wheeling Bridge Company, 13 How. 518; Veazie et al. vs. Moor, 14 How. 568; Smith vs. State of Maryland, 18 How. 71; State of Pennsylvania vs. The Wheeling Belmont Bridge Company et al., 18 How. 421; Sinnitt vs. Davenport, 22 How. 227; Foster et al. vs. Davenport et al., 22 How. 244; Conwat et al. vs. Taylor's ex., 1 Black, 603; United States vs. Holliday, 3 Wall. 407; Gilman vs. Philadelphia, 3 Wall. 713; The Passaic Bridges, 3 Wall. 782; Steamship Company vs. Port Wardens, 6 Wall. 31; Crandall vs. State of Nevada, 6 Wall. 35; White's Bank vs. Smith, 7 Wall. 646; Waring vs. The Mayor, 8 Wall. 110; Paul vs. Virginia, 8 Wall. 168; Thomson vs. Pacific Railroad, 9 Wall. 579; Downham et al. vs. Alexandria Council, 10 Wall. 173; The Clinton Bridge, 10 Wall. 454; The Daniel Ball, 10 Wall. 557; Liverpool Insurance Company vs. Massachusetts, 10 Wall. 566; The Montello, 11 Wall. 411; ex parte McNeil, 13 Wall. 236; State Freight Tax, 15 Wall. 232; State Tax on Railway Gross Receipts, 15 Wall. 284; Osborn vs. Mobile, 16 Wall. 479; Railroad Company vs. Fuller, 17 Wall. 560; Bartemeyer vs. Iowa, 18 Wall. 129; The Delaware Railroad Tax, 18 Wall. 206; Peete vs. Morgan, 19 Wall. 581; Railroad Company vs. Richmond, 19 Wall. 584; Railroad Company vs. Maryland, 21 Wall. 456; The Lottawanna, 21 Wall. 558; Henderson et al. vs. The Mayor of the City of New York, 92 U. S. 259; Chy Lung vs. Freeman et al., 92 U. S. 275; South Carolina vs. Georgia et al., 93 U. S. 4; Sherlock et al. vs. Alling. Adm., 93

U. S. 99; United States vs. Forty-three Gallons of Whiskey, etc., 93 U. S. 188; Foster vs. Master and Wardens of the Port of New Orleans, 94 U. S. 246; Railroad Co. vs. Husen, 95 U. S. 465; Pensacola Tel. Co. vs. W. U. Tel. Co., 96 U. S. 1; Beer Co. vs. Massachusetts, 97 U. S. 25; Cook vs. Pennsylvania, 97 U. S. 566; Packet Co. vs. St. Louis, 100 U. S. 423; Wilson vs. McNamee, 102 U. S. 572; Moran vs. New Orleans, 112 U. S. 69; Head Money Cases, 112 U. S. 580; Cooper Mfg. Co. vs. Ferguson, 113 U. S. 727; Gloucester Ferry Co. vs. Pennsylvania, 114 U. S. 196; Brown vs. Houston, 114 U. S. 622; Walling vs. Michigan, 116 U. S. 446; Pickard vs. Pullman Southern Car Co., 117 U. S. 34; Tennessee vs. Pullman Southern Car Co., 117 U. S. 51; Sprague vs. Thompson, 118 U. S. 90; Morgan vs. Louisiana, 118 U. S. 455; Wabash, St. Louis & Pacific Ry. vs. Illinois, 118 U. S. 557; Huse vs. Glover, 118 U. S. 543; Robbins vs. Shelby Co. Taxing Dist., 120 U. S. 489; Corson vs. Maryland, 120 U. S. 502; Barron vs. Burnside, 121 U. S. 186; Fargo vs. Michigan, 121 U. S. 230; Ouachita Packet Co. vs. Aiken, 121 U. S. 444; Phila. & Southern S. S. Co. vs. Penna., 122 U. S. 326; W. U. Tel. Co. vs. Pendleton, 122 U. S. 347.

3. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (Cons. U. S., Art. 1, Sec. 1.)

The term "legislative power" means the power or authority under the Constitution, or frame of government, to make, alter and repeal laws. (O'Neil vs. American, etc., Ins. Co., 166 Pa. St. 72.)

The powers of the three branches of the Government are distinct and independent (Sinking Fund Cases, 119 U. S. 718), and one branch of the Government cannot encroach upon the powers confided to another. (Hayburn's Case, 3 Dall. 409 and notes; Kilbourn vs. Thompson, 103 U. S. 168).

4. In the exercise of the power to regulate interstate and foreign commerce, Congress is restrained only by the limitations imposed by the Constitution.

No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State be obliged to enter, clear or pay Duties in another.

While this provision of the Constitution is a limitation upon the Congress, at least in certain types of legislation, it is not upon the judiciary. In a brief on the constitutionality of a plan whereby unreasonable rates and unjust practices are to be prevented and abolished through the intervention of the courts, a consideration of it would be surplusage.

(b) No person shall * * * be deprived of life, liberty or property without due process of law. (Cons. U. S., Amend. V.)

That a corporation is a person under the Constitution, see Den vs. Hoboken Land Co., 18 How. 276; Smyth vs. Ames, 169 U. S. 466; Covington, etc., Turnpike Co. vs. Sandford, 164 U. S. 578; Minneapolis, etc., R. R. vs. Beckwith, 129 U. S. 26; Charlotte, etc.,

Ry. Co. vs. Gibbes, 142 U. S. 386; San Mateo Co. vs. S. P. R. Co, 13 Fed. 722; Santa Clara Co. vs. S. P. Ry. Co., 18 Fed. 385.

The term "due process of law" remains without precise definition. (Davidson vs. New Orleans, 96 U. S. 104.) It has been said to be the due course of legal proceedings, according to the established rules for the protection of private rights. (Kennard vs. Louisiana, 92 U. S. 481.) Also, such exercise of the powers of government as the settled maxims of the law permit and sanction. (Bertholf vs. O'Reilly, 74 N. Y. 509.) Various other definitions have been attempted by the several courts, but in all probability the doctrine stated in the case of Pennoyer vs. Neff (95 U. S. 733) is the true one, namely: a tribunal of competent jurisdiction, and a sufficient service on the defendant, or an appearance on his part to render him amenable to that jurisdiction.

Accepting this, it becomes necessary to ascertain what is a tribunal. The most liberal definition, as well as one germane to the present inquiry, is to be found in Smith vs. City of Waterbury (54 Conn. 178):

The tribunal before which matters pertaining to railroads are discussed, and by which they are decided, may, with propriety, be called a "court of justice," not an ordinary court, but a special tribunal authorized to administer justice in a class of cases which experience proves cannot so satisfactorily be tried before regular courts.

5. To prescribe railroad rates for the future is a legislative act.

We have, therefore, these considerations presented: First, the power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function. (I. C. C. vs. C. N. O. & T. P. Ry., 167 U. S. 479 (505); Judson, Inters. Com., Sec. 124; Snyder, Inters. Com. Act, p. 193.)

6. *Quare?* Can Congress delegate the legislative powers vested in it? (Sutherland. Notes U. S. Cons., pp. 677-685.)

One of the settled maxims of constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain, and by the constitutional agency alone the law must be made until the Constitution itself be changed. The power to whose judgment, wisdom and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust. (Cooley, Cons. Lim., p. 163.)

These are the bounds which the trust that is put in them by society, and the law of God and nature, have set to the legislative power of every Commonwealth, in all forms of government:

First—They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at the plow.

Secondly—These laws also ought to be designed for no other end ultimately but for the good of the people.

Thirdly—They must not raise taxes on the property of the people without the consent of the people, given by themselves or their deputies. And this properly concerns only such governments where the legislative is always in being, or at least where the people have not reserved any part of the legislative to deputies, to be from time to time chosen by themselves.

Fourthly—The legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have. (Locke on Civil Government, Sec. 142.)

The language of the court in Field vs. Clark (143 U. S. 692) in this behalf is as follows:

That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution. * * * "The true distinction," as Judge Ranney, speaking for the Supreme Court of Ohio, has well said, "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (Railroad Co. vs. Commissioners, 1 Ohio St. 88.)

That legislative power cannot be delegated, see Thorne vs. Cramer, 15 Barb. 112; Bradley vs. Baxter, 15 Barb. 122; Barto vs. Himrod, 8 N. Y. 483; People vs. Stout, 23 Barb. 349; Rice vs. Foster, 4 Harr. 479; Santo vs. State, 2 Iowa 165; Geebrick vs. State, 5 Iowa 491; State vs. Beneke, 9 Iowa 203; State vs. Weir, 33 Iowa 134; 11 Am. Rep. 115; People vs. Collins, 3 Mich. 343; Railroad Company vs. Commissioners of Clinton County, 1 Ohio St. 77; Parker vs. Commonwealth, 6 Pa. St. 507; Commonwealth vs. McWilliams, 11 Pa. St. 61; Maize vs. State, 4 Ind. 342; Meshmeir vs. State, 11 Ind. 482; State vs. Parker, 26 Vt. 357; State vs. Swisher, 17 Tex. 441; State vs. Copeland, 3 R. I. 33; State vs. Wilcox, 45 Mo. 458; Commonwealth vs. Locke, 72 Pa. St. 491; Ex parte Wall, 48 Cal. 279; Willis vs. Owen, 43 Tex. 41; Farnsworth Co. vs. Lisbon, 62 Me. 451; Brewer Brick Co. vs. Brewer, 62 Me. 62; State vs. Hudson Co. Com'rs, 37 N. J. 12; Auditor vs. Holland, 14 Bush. 147; State vs. Simons, 32 Minn. 540; Bradshaw vs. Lankford, 73 Md. 428; Owensboro & N. R. Co. vs. Todd, 91 Ky. 175.

7. That the Congress or any other legislative body ought to be circumscribed and controlled in its acts by the rules laid down by Locke (Civil Government, sec. 142) is certain.

First, they are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at the plow. Second, these laws also ought to be designed for no other end ultimately but the good of the people.

8. The Congress in legislating of and concerning railway rates and practices, ought to be mindful of the "general welfare" of the people of the Union, and enact wise and conservative legislation, which will define rights and create an adequate remedy, in the event those rights be infringed.

The Judicial Power of the United States.

1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. (Cons. U. S., Art. III, sec. 2, cl. 1.)

2. Congress is empowered to give the Federal courts jurisdiction over every case wherein a question within the judicial power is an ingredient. (Osborne vs. United States Bank, 9 Wheat. 823.)

3. Jurisdiction is the power to hear and determine the subject matter in controversy between the parties to a suit; to adjudicate or exercise judicial power over it. (U. S. vs. Arredondo, 6 Pet. 709; Rhode Island vs. Mass., 12 Pet. 718; Grignon vs. Astor, 2 How. 338; ex parte McCardle, 7 Wall. 514; Windsor vs. McVeigh, 93 U. S. 284; Overby vs. Gordon, 177 U. S. 220; Brown on Juris., sec. 2 and notes.)

4. Equity, in a jurisdictional sense, may be defined as an independent system of jurisprudence supplemental and complementary to the law; giving an adequate right of action for the enforcement of such clear and positive civil rights as a party should, from recognized principles of justice, be entitled to, but has been omitted by the law; or, when the law, because of its generality, fails to give a full, complete or adequate remedy in certain cases, in view of the surrounding circumstances and situation of the parties; or equity takes jurisdiction in order to administer a preventive remedy, in view of the irreparable injury that would or might follow the commission of the wrong. And also where, by reason of established forms of law, auxiliary aid is needed in particular cases for the administering of proper relief or the determination of the issues. In other words, equity jurisdiction has been classified as embracing a class of actions where the law has omitted to give either a right of action or a remedy for the wrong done. (Brown, Jurisd., sec. 196; Story, Eq. Juris, sec. 44; Andrews, Am. Law, sec. 647; Pom. Eq., secs. 36-38.)

5. It is uncontroverted that a court, upon which has been cast jurisdiction of a matter and the persons affected thereby, is empowered and authorized to join the operation of rates fixed by a railway commission, upon the ground that same are unreasonable and unjust. (Reagan vs. Farmers L. & T. Co., 154 U. S. 362.) As jurisdiction does not and cannot depend upon who is the complainant or the actor, and as the "judicial power was granted for the same benign and salutary purposes (common and equal benefit for all people of the United States), it was not to be exercised for the benefit of parties who might be plaintiff, and would elect the national forum, but also for the protection of defendants, who might be entitled to try their rights, or assert their privileges before the same forum," it is inconceivable that it can be argued with sincerity that equity will not take cognizance of a case wherein the rates prescribed by the carriers are unreasonable and unjust, or the practices established by them are prejudicial to some of the members of the

community and result in discriminations forbidden by law.

Moreover, as in the past, the powers of the court have been brought into force upon a proper complaint at either the instance of the carrier or the individual (*post*), it can be confidently stated that, under a proper substantive statute and one conferring jurisdiction, there would be the same exercise of jurisdiction in the future.

6. The determination whether or not an existing rate is reasonable is a judicial function.

The question of the reasonableness of a rate of charge for transportation by a railroad company, involving, as it does, the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination.

(Chicago, etc., Ry. Co. vs. Minnesota, 134 U. S. 418.) Snyder, Inters. Com. Law, p. 55; C. N. O. & T. P. Ry. Co. vs. I. C. C., 179 U. S. 479 (499); Reagan vs. Farmers L. & T. Co., 154 U. S. 362 (397); St. L. & S. F. R. Co. vs. Gill, 156 U. S. 649 (663); C. N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S. 196; Texas & P. Ry. Co. vs. I. C. C., 162 U. S. 167 (217); Munn vs. Illinois, 94 U. S. 113 (144); Peik vs. Chicago & N. W. Ry. Co., 94 U. S. 164 (178); Memphis & L. R. Co. vs. Southern Express, 117 U. S. 1 (29).

7. There are certain instances where jurisdiction has been given to courts to determine what shall constitute reasonable compensation, and there are other numerous instances where courts of equity have exercised such jurisdiction, both under, and in the absence of, substantive law.

(a) The Congress has frequently cast upon the Supreme Court of the District of Columbia jurisdiction to determine the amount which two carriers should contribute for the construction of tracks where they coincide, or to ascertain what the new street railroad shall pay to the existing one if the coinciding carriers shall fail to agree.

One of the provisions concerning the joint use of tracks is that whenever a prescribed route may coincide with the route of an existing railroad or connecting portions of the same, only one set of tracks shall be used, by the two companies, "which are hereby authorized and empowered to use such tracks in common, upon such fair and equitable terms as may be agreed upon by said companies; and in the event the said companies fail to agree upon satisfactory terms, either of said companies may apply by petition to the Supreme Court of the District of Columbia, which shall provide for proper notice to and hearing of all parties interested, and shall have power to determine the terms and conditions upon which, and the regulations under which, the company hereby incorporated shall be entitled so to use and enjoy the tracks of such other street railroad company, and the amount and manner of compensation to be paid therefor." (18 U. S. Stats., 510.)

Where tracks are not existing, it has been provided that "each company using tracks shall contribute

equitably to the expense of laying and maintaining them; the amount to be contributed to be ascertained, when the companies disagree, by the Supreme Court of the District of Columbia, upon application of any company interested, and on notice to and hearing of the parties interested. (18 U. S. Stats., 328.)

The act providing for the union station in the District of Columbia, approved February 28, 1903, provides (section 11):

That any railroad company now or hereafter lawfully existing and authorized to extend a line of railroad into the District of Columbia, or having secured the right to operate over the lines of any other then existing railroad, to a point of connecting with the tracks of said terminal company, shall have the right to the joint use of said station and terminals upon the payment of a reasonable compensation for the use of the same; and if the parties be unable to agree upon such terms, then the same shall be prescribed by the Supreme Court of the District of Columbia, upon petition of either party in interest, under such rules of procedure as the said court shall prescribe.

Other instances of the casting upon existing courts the right to hear and determine rates of compensation for joint use of tracks, for motive power, for the construction of tracks and similar purposes, will be found in 18 U. S. Stats., 498; 21 U. S. Stats., 414; 25 U. S. Stats., 446; 25 U. S. Stats., 492; 25 U. S. Stats., 560; 26 U. S. Stats., 789; 27 U. S. Stats., 23; 27 U. S. Stats., 65; 27 U. S. Stats., 66; 27 U. S. Stats., 326; 27 U. S. Stats., 490; 28 U. S. Stats., 217; 28 U. S. Stats., 494; 28 U. S. Stats., 593; 28 U. S. Stats., 717; 28 U. S. Stats., 721, authorizing and requiring reciprocal trackage arrangements and providing that in case of failure to agree, the matters in dispute to be determined by the Supreme Court of the District of Columbia, affecting a considerable number of street railways.

It is true that the corporations have in general agreed upon the amount which should be contributed by each of the carriers for the construction of the joint route or of the compensation which should be paid by the carrier last incorporated for the use of the tracks and power of the earlier company. Several petitions have, however, been filed in the Supreme Court of the District of Columbia, but neither the right of Congress to legislate in this behalf nor the jurisdiction of the court has ever been doubted. The leading case is that of the Washington, Alexandria & Mt. Vernon Railway vs. Anacostia & Potomac River Railway Company (in Equity, No. 21075). In this case, after testimony taken, it was provided by the decree that the defendant should pay \$18,000, being one-half of the cost of construction, and thereby become co-owner; that repairs be made at joint expense; that the complainant be required to construct certain switches essential to the physical connection, and also to pay for certain changes in the cars of the defendant, made necessary by the difference in voltage used by the complainant.

(b) A court of equity has, by injunction, compelled a common carrier to make personal delivery of goods to a consignee, and restrained the carrier from

imposing upon certain warehousemen no greater charges than it imposes upon others, and enjoined it from attempting to levy such greater charges.

Bill to compel, under a statute, delivering of cars of grain to complainant and to prohibit the carrier from charging complainant more than his competitor. Demurrer.

As to the general equity of the bill, it is hardly necessary to remark. It is to be hoped that when the answer comes in, and the evidence is heard, some explanation may be given by the defendant of its course. For the present we must accept the bill as true. As the record now stands, the company seems to be using its vast powers, as a corporation, with a view to create a practical monopoly for a favored house, in dealing with all the grain that must necessarily come over its lines from the long track of country that it traverses, thus ruining the business of appellants, and inaugurating a policy which, if once established, would place the farmers of the State under grievous tribute; and all this in defiance of an act of the legislature so plain that he who runs may read. The act in question is an eminently wise and salutary law, and the courts should use all their legitimate powers to guard it against either open disobedience or covert evasion. Injunction granted, restraining the carrier from delivering grain to any other place or warehouse than that of complainant, if consigned to them, or from imposing upon them an additional charge for such delivery, beyond what is imposed on other warehousemen. (Vincent vs. C. & A. Ry. Co., 49 Ill. 33.)

(c) A coal mining company was granted relief by injunction against a common carrier where the latter persisted in charging tolls greater than prescribed by the legislature.

Bill to compel taking of freight and restrain excessive tolls.

It only remains to consider whether the appellant (Coal Company) is entitled to relief by injunction as prayed, and of this we think there can be little question or doubt. It is said by the appellees that the grievance complained of is of a public nature; but it clearly appears that the appellant, which is a coal mining company, with its tramroad connecting with the railroad of the appellee and depending entirely upon the latter for the means of transporting its coal to market, is especially damaged by the illegal exactions by the railroad company of excessive freights. This grievance is constantly occurring, and there is no adequate remedy at law. * * * Several authorities have been cited by the appellant in support of the jurisdiction of a Court of Equity to grant relief in cases of this kind; but without referring to them more particularly, we think it very clear that the injunction ought to issue as prayed.

(Cases cited by counsel in support of the jurisdiction of equity to grant an injunction were: Hodges on Railroads, 3rd ed., p. 751; Perrine vs. Del. & Ches. C. Co., 9 How. 172; Campbell et al. vs. M. & C. R. R. Co., 23 Ohio St. 168; Danforth vs. R. R. Co., 24 Pa. St. 378; Com'r vs. Erie & N. E. R. Co., 27 Pa. St. 339; W. & F. R. R. Co. vs. Clarion, &c., 54 Pa. St. 28; Baxendale vs. North Devon R. Co., 3 C. B. N. S. 324; Baxendale vs. Great Western R. R. Co., 5 C. B., N. S. 309; Pickford vs. Grand Junction R. R. Co., 3 Ra. Cas. 538; Mayor, etc., vs. Chorby Water Works, 2 De Gex, M. & G. 860; Thompson vs. N. & H. R. R. Co.,

3 Sanford, Ch. 653; Rogers Locomotive Works vs. Erie, etc., 5 C. E. Green 379; Corning's vs. Troy, 40 N. Y. 191; Ewell vs. Greenwood, 26 Iowa 377; Green vs. Oakes, 17 Ill. 247; Craig vs. People, 47 Id. 47; Vincent vs. Chicago, etc., 49 Id. 33; Smith vs. Lockwood, 13 Barb. 209; Atty. Genl. vs. Johnson, 2 Wils. Ch. 87; Atty. Genl. vs. Forbes, 2 M. & Cr. 123.) American Coal Co. vs. C. C. Co. & C. & P. R. Co., 46 Md. 15.

(d) A mandatory injunction was granted to compel one railroad company to receive and transport cars tendered it by a connecting line, and the fact that the acceptance of such cars would cause a strike of the employes of the defendant was no justification of the refusal to accept cars.

Motion for injunction under statute of Iowa and Interstate Commerce Act to compel "reasonable, proper and equal facilities for interchange of traffic."

Love, J.:

The injury complained of is clearly irreparable, except by the remedy now prayed for by the complainant. It is a continuing injury. It may occur every day, and many times a day. * * * The mandatory injunction against the defendant company * * * will be granted. * * * No temporary injunction can be granted against the defendants who have not been served with notices. * * * But the order is that in the meantime a restraining order * * * be issued and served upon the said defendants. (C. B. & Q. Ry. Co. vs. Bur., C., R. & N. Ry. Co., 34 Fed. 481.)

(e) A mandatory preliminary injunction was granted to prevent a railroad company from refusing to furnish to another carrier the same facilities for the interstate transportation of freight as afforded to other companies.

Bill by carrier against the officers and agents of another carrier to enjoin them from refusing to extend to complainant the same equal facilities as others for the exchange of interstate traffic. The basis of the action was Section 3 of the Act to Regulate Commerce. Holding that the case was a proper one for the cognizance of a Federal court, the court said:

Remedies of a similar nature might undoubtedly be invoked under statutes and the common law, but the act in question affords the broadest and most effective relief, and the jurisdiction is therefore safely grounded upon that law.

The order having been issued, it was attacked upon the ground that it was without precedent.

Every just order or rule known to equity courts was born of some emergency, to meet some new conditions, and was, therefore, in its time, without a precedent. If based on sound principles, and beneficent results follow their enforcement, affording necessary relief to the one party without imposing illegal burdens on the other, new remedies and unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief.

Mr. Justice Brewer, sitting in the Circuit Court for Nebraska, said:

I believe most thoroughly that the powers of a court of equity are as vast, and its processes and pro-

cedure as elastic, as all the changing emergencies of increasing complex business relations and the protection of rights demand.

Mr. Justice Blatchford, speaking for the Supreme Court, in Joy vs. St. Louis, 138 U. S. 1, said:

* * * It is one of the most useful functions of a court of equity that its procedure are capable of being made such as to accommodate themselves to the development of the interests of the public in the progress of trade and traffic by new methods of intercourse and transportation. (Toledo, A. A. & N. M. Ry. Co. vs. Pennsylvania Company, 54 Fed. 746.)

(f) An injunction was issued against a defendant company compelling them to accept freight or passengers from the plaintiff company at the same rate as charged other companies. (Denver & N. O. R. Co. vs. Atchison, T. & S. F. R. Co., 15 Fed. 650.) It is true that the Supreme Court of the United States, upon a cross appeal, held in this case that one carrier was not entitled to a mandatory injunction compelling the other to stop at a railroad junction and interchange business, upon the ground that neither the common law nor the State statutes provided rights essential to the granting of the injunction. (110 U. S. 667.)

(g) A railroad company will be enjoined from making an unjust discrimination between shippers.

We think the authorities abundantly show that in a case like the one at bar the plaintiffs can seek relief by injunction, and that it is an appropriate remedy to determine the rights of the parties here without first resorting to an action at law. The plaintiffs have a manufacturing capacity of 150,000 barrels per year. Shall they be compelled to bring a separate action for each carload? What number of suits would it require? Are the damages of plaintiffs for loss of profits susceptible of easy proof, or even capable of any exact estimation? We think the plaintiffs have a clear and undoubted right to come into a court of equity and have the rights of parties determined in a single action. (Scofield vs. Railway, 43 Ohio St. 571.)

(h) The members of a freight association will be enjoined from enforcing an unreasonable and unjust increase in freight rates which would result in great injury to the plaintiff's business.

Then it is clear that the court of the United States has jurisdiction as such of this question arising under the Constitution and laws of the United States. It is equally clear that the court sitting in equity has jurisdiction to grant the specific relief prayed. It has long been the practice of courts of equity to grant injunctions against extortionate charges and unjust discriminations. (Menacho vs. Ward, 27 Fed. 529; Southern Express Co. vs. Memphis, etc., Ry. Co., 8 Fed. 799, affirmed 10 Fed. 210; Coe vs. Louisville, etc., R. Co., 3 Fed. 755.) * * * In the nature of things there must be a vast variety of controversies in which the remedy at law on an action brought by an individual wronged is utterly inadequate to afford relief either to the individual or to the multitudes who are in similar case with him. It is often in the power of a railroad company to greatly injure or wholly destroy one's business, or a general business of a particular class. In such case injunction would be the appropriate remedy. So an injunction is granted to prevent illegal

discriminations and illegal exactions in excess of rates fixed by law. This, upon the ground, in part, that the injury being a constantly recurring one, there is no adequate remedy at law. (1 High on Injunctions, sec. 616; *Rogers Loc. Works vs. Erie Ry. Co.*, 20 N. J. Eq. 379.) A discrimination based upon the larger business done by the favored shipper will be enjoined on the ground of preventing a multiplicity of suits. (1 High on Injunc., sec. 621.)

Oelrich vs. Spain, 82 U. S. 211 (228) * * * supports the proposition that, where a direct proceeding in equity will save time, expense and a multiplicity of suits, and settle finally the rights of all concerned in one litigation, the court will entertain jurisdiction.

Schofield vs. Lake Shore, etc., R. Co., 43 Ohio St. 571, cited and approved; as also *Butchers, etc., Stock Yards Co. vs. Louisville R. Co.*, 67 Fed. 35; also *Southern Express Co. vs. Memphis, etc., R. Co.*, 8 Fed. 799 (an injunction inhibiting the carrier from charging more than a fair and reasonable rate); also *Chicago, etc., R. Co. vs. Minn.*, 134 U. S. 418; *U. S. vs. Mo. Pac. Ry.*, 66 Fed. 903; *I. C. C. vs. Western, etc., R. Co.*, 88 Fed. 186.

It is equally clear that in this case the court has jurisdiction, in order to avoid a multiplicity of suits. It would be a reflection upon American jurisprudence if such a multitude of complainants, who have identical claims of right relative to the same subject matter against a multitude of defendants, all of whom are public corporations, who are alleged to be in combination to inflict a common and simultaneous wrong on each and every complainant, should be driven to the cost and expense of maintaining separate actions at law for each instance of such alleged wrong. * * * Modern jurisprudence will not tolerate methods so fraught with ruinous expense, harassing and destructive delay. * * *

It follows from these considerations that the complainant's bill is properly before the court, and must be maintained to adjust the rights of the contending parties as they are finally to be ascertained. (*Tift et al. vs. Southern R. Co.*, 123 Fed. 789.)

On the general subject that injunction is an appropriate remedy in such cases, in order to avoid a multiplicity of suits, see *Story, Eq. Juris.*, sec. 901; *Phelps Eq.*, sec. 228; 1 *Pom. Eq.*, sec. 243; *Phelps Eq.*, sec. 24; 1 *Pom. Eq.*, secs. 113, 243; *Story, Eq. Pl.*, sec. 72; *Gregory vs. Stetson*, 133 U. S. 579; *Christian vs. A. & N. C. R. Co.*, 133 U. S. 233, 241. In order to avoid damages to the plaintiff which are difficult of determination and therefore irreparable, such cases are not unlike cases of continuing nuisance or trespass, and, in fact, partake quite distinctly of both of these wrongs. See *Story Eq. Juris.*, secs. 926, 928; *Commercial Bank vs. Bowman*, 1 *Handy*, 259. For the purpose of stopping a corporation from using its powers to the injury of other persons, see *Story Eq. Juris.*, sec. 927; *Sanford vs. R. R. Co.*, 24 Pa. St. 378.

The opinion of Mr. Justice Harlan in *Smyth vs. Ames*, 169 U. S. 464 (517), is worthy of note:

Under the principles which, in the Federal system, distinguish cases in law from those in equity, the Circuit Court of the United States, sitting in equity, can make a comprehensive decree covering the whole ground of controversy, and thus avoid multiplicity of suits that would inevitably arise under the statute. The carrier is made liable, not only to individual persons for every act, matter, or thing prohibited by the

statute, and for every omission to do any act, matter, or thing required to be done, but to a fine of from one thousand to five thousand dollars for the first offense, from five thousand to ten thousand dollars for the second offense, from ten thousand to twenty thousand dollars for the third offense, and twenty-five thousand dollars for every subsequent offense. The transactions along the line of any one of these railroads, out of which causes of action might arise under the statute, are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills, would avoid a multiplicity of suits and give a remedy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged for transportation. The transactions of a single week would expose any company questioning the validity of the statute to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency and determine, once for all and without a multiplicity of suits, matters that affect, not simply individuals, but the interests of the entire community as involved in the use of a public highway and in the administration of the affairs of the quasi-public corporation by which such highway is maintained.

The Separation of the Government Into Three Departments Is Clear, and There Must Be No Encroachment by One Department Upon the Functions of Another.

Constitutional government in the United States is distinguished by the care that has been exercised in committing the legislative, executive and judicial functions to separate departments, and in forbidding any encroachment by one department in the exercise of the authority so delegated. (6 A. & E. Ency. Law, 2 ed., 1006.)

One branch of the Government cannot inroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule. (*U. P. Ry. vs. U. S.*, 99 U. S. 700.)

It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to governments, whether State or national, are divided into the three grand departments of the executive, legislative and judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to inroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. (*Kilbourn vs. Thompson*, 103 U. S. 168.)

See, also, *Hare's Am. Cons. Law*, p. 850; *Greenough vs. Greenough*, 11 Pa. St. 494; *Hovey vs. State*, 119 Ind. 393; *Merrill vs. Sherburne*, 1 N. H. 199; *Crane vs. Meginnis*, 1 G. & J. (Md.) 463; *Hoke vs. Henderson*, 4 Dev. L. (N. Car.) 1; *Butler vs. Saginaw Co.*, 26 Mich. 27.

Conclusion.

As the Government of the United States is one of enumerated powers, and can only exercise such functions as are specifically named, or are included by necessary implication; as the Constitution of the United States specifically limits the powers of Congress in the matter of legislation within certain prescribed boundaries; as the power of Congress is plenary and supreme in the matter of regulating commerce with foreign nations and among the several States, subject to the two limitations, if they be such, that no preference shall be given by any regulation of commerce to the ports of one State over those of another, and that no person shall be deprived of life, liberty and property without due process of law; as all legislative powers which Congress possess have been vested in it by the Constitution; as it can be seriously doubted whether or not Congress, its own powers being delegated, can delegate legislative functions to a body, executive, legislative or judicial; as the prescribing of railway rates for the future is a legislative act; as the judicial power of the United States extends to all cases in law and equity, arising under the Constitution, the laws of the United States and treaties made, or which shall be made under their authority; as the jurisdiction of the courts in equity has heretofore been found ample to correct by injunction and other process the discriminations forbidden by the common or statutory law, when existing by reason of rules or regulations laid down by carriers; as the determining whether an existing change is reasonable is purely a judicial function—I therefore conclude (a) that the proposed plan is constitutional, in harmony with our institutions and in consonance with the principles of our jurisprudence, and (b) that under the proper exercise of the powers of the Federal Legislature it ought to enact a substantive statute, either by amending the existing law or by passing a comprehensive law, wherein shall be defined the rights of parties, and wherein also shall be declared what acts shall be unlawful, and that that law provide judicial machinery, upon which should be conferred jurisdiction to correct by injunction or other process the infringement of the rights named in the substantive law.

There can be no doubt that the correction of certain pernicious practices is clearly within the province of the courts, and that the making of rates for the future by naming them in currency is a legislative act. To enforce a compliance with such legislature made rates would require the intervention of a judicial body; to place within one body the functions of more than one of the co-ordinate branches of the Government would violate an established principle whereon our Government rests. Prevention by appropriate process of charging more than a reasonable rate is not making rates for the future, it is simply the furnishing to aggrieved parties the same means of correction of infringed rights which have been in existence for centuries. This is one of the primeval and inherent rights of all persons living under our system of government

and jurisprudence, whether such persons be natural or artificial.

We have proven the proposed plan constitutional. If the questions of advisability and expediency be considered—matters not taken up herein—they furnish additional argument for the adoption of the plan suggested.

WASHINGTON, December 30, 1905.

JUDGE GROSSCUP'S TRAFFIC PLAN.

Comprehensive Outline of Its Main Features and Its Many Important Advantages.

In outline Judge Grosscup's plan provides:

1.—The creation of a bureau in the Department of Commerce; or a department, or a commission, not to exceed three members, having all the powers of the present interstate Commerce Commission, together with power to employ counsel and experts, and to prosecute, in the name and on behalf of the United States, *parens patriæ*, civilly and criminally, all infractions of the Interstate Commerce Act, including the provision that all rates shall be reasonable and just.

2.—The creation of a Court of Transportation of seven judges, three of whom shall be appointed to the court for life, the other four being designated from the Circuit Court for terms of three years. This court to sit *en banc* in the city of Washington and such other places as it may designate, and at *nisi prius* in the respective judicial districts of the United States whenever any case in that district may arise.

3.—The clerks of the Circuit Court for the several districts and the marshals thereof shall be clerks and marshals *ex officio* of this court, and juries shall be drawn for this court as for the Circuit Court and District Court; and juries shall be interchangeable between the Circuit and District Courts and this court.

4.—One or more of the judges of this court shall constitute a quorum when sitting at *nisi prius*, and four shall constitute a quorum when sitting *en banc*.

5.—The court shall have jurisdiction of all cases, civil and criminal, arising under the Interstate Commerce Act.

6.—The court shall have the full powers of a court of chancery to enjoin finally, temporarily or provisionally any infraction of that act, including the provision of the act that all rates shall be reasonable and just.

7.—Appeals shall lie from any order, decree or judgment of the court sitting at *nisi prius* to the court *en banc*. But such appeal shall not suspend the order, decree or judgment appealed from, except upon the special order to that effect of the court sitting *en banc*,

or of four judges thereof, and then only upon the conditions named in order of suspension.

8.—The Supreme Court may review the judgments, orders and decrees of the Court of Transportation on certiorari; but the right of appeal to the Supreme Court shall be limited, as in the case of appeal from the existing Circuit Courts of Appeal.

9.—The Court of Transportation may, of its own motion, certify cases to the Supreme Court, or stated questions in cases, on which the opinion of the Supreme Court is desired.

10.—Whether sitting *en banc* or at *nisi prius* the court shall proceed in every case brought before it with the greatest practicable dispatch, immediateness of remedy being declared to be one of the highest of remedial rights of the parties to the suit.

Advantages of Grosscup Plan.

- 1.—The plan is constitutional.
- 2.—The plan furnishes adequate relief.
- 3.—The matter being one public in its nature, the costs of the proceeding are to be paid by the carrier or State—not the shipper.
- 4.—The relief in the courts is complete.
- 5.—The plan is fair, permitting each of the parties to avail themselves of a forum in which it has been the custom to try issues.
- 6.—The plan affords prompt adjudication of the matters.
- 7.—The special court insures judges who know the subject, and hence their judgment would be of greater value than existing courts.
- 8.—The court at *nisi prius* being in different parts of the country, provides for quick action at all points.
- 9.—The plan is flexible, accommodating itself to commercial conditions.
- 10.—The plan and the procedure thereunder are so simple that a layman can understand it; no intricacies of pleading, no fictions.
- 11.—The plan is in harmony with the principles of our Government.
- 12.—All of the benefits and advantages of the present system (informal complaints before the Commission) are preserved.
- 13.—Its value and necessity are attested by the indorsements of leading business firms of the country.

Railroad Equipment a Record Breaker in 1905.

According to statistics compiled by the *Railroad Gazette*, 168,006 cars were built during 1905. This includes cars for use on subway and elevated railroads, exclusive of street and interurban electric cars. This

figure does not include cars built by railroads in their own shops. Of the total 165,455 are for freight service and 2,551 for passenger service; 5,305 cars were exported.

This is the largest output in any previous year and more than doubles that of last year. During three months past the car companies have placed record breaking orders, the majority for delivery in 1907, and two of the leading railroads have ordered almost as many cars as the total output in 1904.

The locomotive builders in the United States and Canada have turned out 5,491 new locomotives in 1905, as compared with 3,441 in 1904. These figures do not include locomotives built by railroads in their own shops nor orders for repairs or rebuilding. Last year 140 electric locomotives were constructed, as compared with 95 during the previous year.

The average cost per freight car is \$1,000, and the total cost would be \$165,455,000. The average cost for passenger cars is \$7,000, which would give a total of \$17,057,000.

Pennsylvania's Six Track Railroad.

A new freight line has been incorporated under New Jersey laws, with a capital of \$500,000, for the purpose of building a railroad between Trenton and Elizabeth, N. J.

The incorporators are all connected with the present Pennsylvania Railroad Company, and are composed of the officers of that company and several of its directors.

The charter authorizes the company to build a railroad extending from the northern boundary line of Trenton, N. J., and connecting with the Pennsylvania Railroad or with the railroad of any company now or hereafter organized under the laws of Pennsylvania, and running from said boundary line in a northeasterly direction through the counties of Mercer, Middlesex and Union to a point near the northern boundary line of Elizabeth, N. J., there to connect with the railroad of the United New Jersey Railroad & Canal Company. The length will be about 47 miles.

This new railroad with its connections at the northern and southern terminals will, when completed, give the Pennsylvania a six track and independent freight line between Jersey City and Philadelphia.

Southern Railway Car Order.

The car famine in the South will be relieved, and Southern shippers are much gratified with the announcement that the Southern Railway has placed orders for 10,000 freight cars of the latest and most improved pattern, to be turned out as soon as possible from the various car foundries throughout the country. The scarcity of cars has been a serious matter, and it has been impossible to supply the increasing demands of the shippers. These orders mean the expenditure of from \$8,000,000 to \$10,000,000, and are to be completed at the earliest possible date.

PRESIDENT RENEWS DEMAND FOR REGULATION.

Believes That Congress Should Give Power to Some "Administrative" Body to Fix a Maximum Reasonable Rate.

THAT part of President Roosevelt's message to Congress (transmitted on December 5) covering the railway regulation question was as follows:

I am well aware of the difficulties of the legislation that I am suggesting and of the need of temperate and cautious action in securing it. I should emphatically protest against improperly radical or hasty action. The first thing to do is to deal with the great corporations engaged in the business of interstate transportation. As I said in my message of December 6 last, the immediate and most pressing need, so far as legislation is concerned, is the enactment into law of some scheme to secure to the agents of the Government such supervision and regulation of the rates charged by the railroads of the country engaged in interstate traffic as shall summarily and effectively prevent the imposition of unjust or unreasonable rates. It must include putting a complete stop to rebates in every shape and form.

This power to regulate rates, like all similar powers over the business world, should be exercised with moderation, caution, and self restraint; but it should exist, so that it can be effectively exercised when the need arises.

The first consideration to be kept in mind is that the power should be affirmative and should be given to some administrative body created by the Congress. If given to the present Interstate Commerce Commission, or to a reorganized Interstate Commerce Commission, such Commission should be made unequivocally administrative. I do not believe in the Government interfering with private business more than is necessary. I do not believe in the Government undertaking any work which can with propriety be left in private hands. But neither do I believe in the Government flinching from overseeing any work when it becomes evident that abuses are sure to obtain therein unless there is governmental supervision.

Maximum Reasonable Rate.

It is not my province to indicate the exact terms of the law which should be enacted; but I call the attention of Congress to certain existing conditions with which it is desirable to deal. In my judgment the most important provision which such law should contain is that conferring upon some competent administrative body the power to decide upon the case being brought before it whether a given rate prescribed by a railroad is reasonable and just, and if it is found to be unreasonable and unjust, then, after full investigation of the complaint, to prescribe the limit of rate beyond which it shall not be lawful to go—the maximum reasonable rate, as it is commonly called—this decision to go into effect within a reasonable time and to obtain from thence onward, subject to review by the courts. It sometimes happens at present not that a rate is too high, but that a favored shipper is given too low a rate. In such case the Commission would have the right to fix this already established minimum rate as the maximum; and it would need only one or two such decisions by the Commission to cure railroad companies of the practice of giving improper minimum rates.

I call your attention to the fact that my proposal is not to give the Commission power to initiate or originate rates generally, but to regulate a rate already fixed or originated by the roads upon complaint and after investigation. A heavy

penalty should be exacted from any corporation which fails to respect an order of the Commission. I regard this power to establish a maximum rate as being essential to any scheme of real reform in the matter of railway regulation. The first necessity is to secure it, and unless it is granted to the Commission there is little use in touching the subject at all.

Severe on Rebates.

Illegal transactions often occur under the forms of law. It has often occurred that a shipper has been told by a traffic officer to buy a large quantity of some commodity, and then after it has been bought an open reduction is made in the rate to take effect immediately, the arrangement resulting to the profit of the one shipper and the one railroad and to the damage of all their competitors, for it must not be forgotten that the big shippers are at least as much to blame as any railroad in the matter of rebates. The law should make it clear so that nobody can fail to understand that any kind of commission paid on freight shipments, whether in this form or in the form of fictitious damages, or of a concession, a free pass, reduced passenger rate or payment of brokerage, is illegal. It is worth while considering whether it would not be wise to confer on the Government the right of civil action against the beneficiary of a rebate for at least twice the value of the rebate; this would help stop what is really blackmail. Elevator allowances should be stopped, for they have now grown to such an extent that they are demoralizing and are used as rebates.

The best possible regulation of rates would, of course, be that regulation secured by an honest agreement among the railroads themselves to carry out the law. Such a general agreement would, for instance, at once put a stop to the efforts of any one big shipper or big railroad to discriminate against or secure advantages over some rival; and such agreement would make the railroads themselves agents for enforcing the law. The power vested in the Government to put a stop to agreements to the detriment of the public should, in my judgment, be accompanied by power to permit, under specified conditions and careful supervision, agreements clearly in the interest of the public. But, in my judgment, the necessity for giving this further power is by no means as great as the necessity for giving the Commission or administrative body the other powers I have enumerated above; and it may well be inadvisable to attempt to vest this particular power in the Commission or other administrative body until it already possesses and is exercising what I regard as by far the most important of all the powers I recommend—as indeed the vitally important power—that to fix a given maximum rate, which rate, after the lapse of a reasonable time, goes into full effect, subject to review by the courts.

Private Car Line Regulations.

All private car lines, industrial roads, refrigerator charges and the like should be expressly put under the supervision of the Interstate Commerce Commission or some similar body so far as rates and agreements practically affecting rates are concerned. The private car owners and the owners of industrial railroads are entitled to a fair and reasonable compensation on their investment but neither private cars nor industrial railroads nor spur tracks should be utilized as devices for securing preferen

tial rates. A rebate in icing charges or in mileage or in a division of the rate for refrigerating charges is just as pernicious as a rebate in any other way. **No lower rate should apply on goods imported than actually obtains on domestic goods from the American seaboard to destination except in cases where water competition is the controlling influence.**

There should be publicity of the accounts of common carriers; no common carrier engaged in interstate business should keep any books or memoranda other than those reported pursuant to law or regulation, and these books or memoranda should be open to the inspection of the Government. Only in this way can violations or evasions of the law be surely detected. A system of examination of railroad accounts should be provided similar to that now conducted into the national banks by the bank examiners; a few first class railroad accountants, if they had proper direction and proper authority to inspect books and papers, could accomplish much in preventing willful violations of the law. It would not be necessary for them to examine into the accounts of any railroad unless for good reasons they were directed to do so by the Interstate Commerce Commission.

It is greatly to be desired that some way might be found by which an agreement as to transportation within a State intended to operate as a fraud upon the federal interstate commerce laws could be brought under the jurisdiction of the federal authorities. At present it occurs that large shipments of interstate traffic are controlled by concessions on purely State business, which, of course, amounts to an evasion of the law. The Commission should have power to enforce fair treatment by the great trunk lines of lateral and branch lines.

I urge upon the Congress the need of providing for expeditious action by the Interstate Commerce Commission in all these matters, whether in regulating rates for transportation or for storing or for handling property or commodities in transit. The history of the cases litigated under the present commerce act shows that its efficacy has been to a great degree destroyed by the weapon of delay, almost the most formidable weapon in the hands of those whose purpose it is to violate the law.

No Hostility to Railroads.

Let me most earnestly say that these recommendations are not made in any spirit of hostility to the railroads. On ethical grounds, on grounds of right, such hostility would be intolerable; and on grounds of mere national self interest we must remember that such hostility would tell against the welfare not merely of some few rich men, but of a multitude of small investors, a multitude of railway employees, wage workers, and most severely against the interest of the public as a whole. I believe that on the whole our railroads have done well and not ill; but the railroad men who wish to do well should not be exposed to competition with those who have no such desire, and the only way to secure this end is to give to some Government tribunal the power to see that justice is done by the unwilling exactly as it is gladly done by the willing. Moreover, if some Government body is given increased power the effect will be to furnish an authoritative answer on behalf of the railroad whenever irrational clamor against it is raised or whenever charges made against it are disproved.

I ask this legislation not only in the interest of the public, but in the interest of the honest railroad man and the honest shipper alike, for it is they who are chiefly jeopardized by the practices of their dishonest competitors. **This legislation should be enacted in a spirit as remote as possible from hysteria and rancor.** If we of the American body politic are true to the traditions we have inherited we shall always scorn any effort to make us hate any man because he is rich just as much as we should scorn any effort to make us look down upon or treat contemptu-

ously any man because he is poor. We judge a man by his conduct—that is, by his character—and not by his wealth or intellect. If he makes his fortune honestly, there is no just cause of quarrel with him. Indeed, we have nothing but the kindest feelings of admiration for the successful business man who behaves decently, whether he has made his success by building or managing a railroad or by shipping goods over that railroad. The big railroad men and big shippers are simply Americans of the ordinary type who have developed to an extraordinary degree certain great business qualities. They are neither better nor worse than their fellow citizens of smaller means. They are merely more able in certain lines and therefore exposed to certain peculiarly strong temptations.

These temptations have not sprung newly into being; the exceptionally successful among mankind have always been exposed to them; but they have grown amazingly in power as a result of the extraordinary development of industrialism along new lines, and under these new conditions, which the lawmakers of old could not foresee and therefore could not provide against, they have become so serious and menacing as to demand entirely new remedies. It is in the interest of the best type of railroad man and the best type of shipper no less than of the public that there should be governmental supervision and regulation of these great business operations, for the same reason that it is in the interest of the corporation which wishes to treat its employees aright that there should be an effective employers' liability act, or an effective system of factory laws to prevent the abuse of women and children.

Would Set Up a Moral Standard.

All such legislation frees the corporation that wishes to do well from being driven into doing ill in order to compete with its rival which prefers to do ill. We desire to set up a moral standard. There can be no delusion more fatal to the nation than the delusion that the standard of profits, of business prosperity, is sufficient in judging any business or political question—from rate legislation to municipal government. Business success, whether for the individual or for the nation, is a good thing only so far as it is accompanied by and develops a high standard of conduct—honor, integrity, civic courage. The kind of business prosperity that blunts the standard of honor, that puts an inordinate value on mere wealth, that makes a man ruthless and conscienceless in trade and weak and cowardly in citizenship, is not a good thing at all, but a very bad thing for the nation. This Government stands for manhood first and for business only as an adjunct of manhood.

No Federal Ownership of Railroads.

The question of transportation lies at the root of all industrial success, and the revolution in transportation which has taken place during the last half century has been the most important factor in the growth of the new industrial conditions. Most emphatically we do not wish to see the man of great talents refused the reward for his talents. Still less do we wish to see him penalized, but we do desire to see the system of railroad transportation so handled that the strong man shall be given no advantage over the weak man. We wish to insure as fair treatment for the small town as for the big city; for the small shipper as for the big shipper. In the old days the highway of commerce, whether by water or by a road on land, was open to all; it belonged to the public and the traffic along it was free. At present the railway is this highway, and we must do our best to see that it is kept open to all on equal terms. Unlike the old highway, it is a very complex thing to manage, and it is far better that it should be managed by private individuals than by the Government. But it can only be so managed on condition that justice is done the public.

It is because, in my judgment, public ownership of rail-

roads is highly undesirable and would probably in this country entail far reaching disaster that I wish to see such supervision and regulation of them in the interest of the public as will make it evident that there is no need for public ownership. The opponents of Government regulation dwell upon the difficulties to be encountered and the intricate and involved nature of the problem. Their contention is true. It is a complicated and delicate problem and all kinds of difficulties are sure to arise in connection with any plan of solution, while no plan will bring all the benefits hoped for by its more optimistic adherents. Moreover, under any healthy plan the benefits will develop gradually and not rapidly.

Must Be of the Highest Type.

Finally, we must clearly understand that the public servants who are to do this peculiarly responsible and delicate work must themselves be of the highest type, both as regards integrity and efficiency. They must be well paid, for otherwise able men cannot in the long run be secured; and they must possess a lofty probity which will revolt as quickly at the thought of pandering to any gust of popular prejudice against rich men as at the thought of anything even remotely resembling subservience to rich men. But while I fully admit the difficulties in the way I do not for a moment admit that these difficulties warrant us in stopping in our effort to secure a wise and just system. They should have no other effect than to spur us on to the exercise of the resolution, the even-handed justice and the fertility of resource which we like to think of as typically American, and which will in the end achieve good results in this as in other fields of activity. The task is a great one and underlies the task of dealing with the whole industrial problem.

But the fact that it is a great problem does not warrant us in shrinking from the attempt to solve it. At present we face such utter lack of supervision, such freedom from the restraints of law that excellent men have often been literally forced into doing what they deplored because otherwise they were left at the mercy of unscrupulous competitors. To rail at and assail the men who have done as they best could under such conditions accomplishes little. What we need to do is to develop an orderly system, and such a system can only come through the gradually increased exercise of the right of efficient Government control.

NUMBER YOUR FREIGHT PACKAGES.

R. A. Kirk, of St. Paul, Makes a Request Important to Shippers and Receivers—Indorsed by the Carriers.

Among the papers read at the annual convention of the National Hardware Association in Washington, in November, was one by R. A. Kirk, president of Farwell, Ozmun, Kirk & Co., St. Paul, Minn., regarding the proper marking of freight. It is of great interest to all shippers and receivers, and runs as follows:

We wish to make an earnest request upon all manufacturers that they number cases in addition to marking shipper's name, and show numbers on shipping tickets, as it is of great assistance to us in making our "freight received" record. In fact, it is rapidly nearing the time when this will be an absolute necessity, as the number of packages going astray is becoming greater each year, owing to the increased tonnage in the Northwest, especially during the lake and rail season. Rule 23 of the Freight Claim Association reads as follows:

"Astray freight shall be immediately forwarded to marked destination on a regular way bill, giving number and initial of car from which unloaded, name of station from which received (if known), weight of shipment to be shown, freight to be billed 'D. H. Astray.' The following notation shall be

placed on such waybills: 'Astray freight. Deliver only on presentation of original bill of lading, or other proof of ownership.' If unable to deliver, the freight shall report back without delay to carrier or carriers in interest."

Example: Shipment of five cases numbered 65, 66, 67, 68, 69 is made via the lakes, and upon arrival at destination checks one case short, No. 67. Some time afterward the case is found and forwarded to proper destination in accordance with Rule 23, and delivered on "D. H. Astray" billing and record is made on "freight received" book, showing case received, filling the shortage on previous shipment, the number being the means of identification. In the course of time the railroad company making delivery of the "astray" box, calls on us for the shipper's name and address, so as to be able to furnish revenue billing, their reference showing case No. 67. The information is easily furnished, but if the cases are not numbered it is almost an impossibility to furnish the necessary information to the railroad company.

It quite frequently occurs that the missing case is delivered by a line other than the one checking short, in which event the number (if case is numbered) enables us to immediately connect the two lots. Prior to the adoption of the above mentioned rule part of the railroad company's packages were allowed to remain "on hand," "over," without any regard to the loss and annoyance to consignees, and we felt the good effect immediately upon the enforcement of the rule. It is for us, the shippers and receivers, to carry out our part, and be able to furnish the railroad company with the necessary information, for should it see fit to withdraw the rule and withhold astray packages, as before, we would be subjected to all kinds of delay and annoyance, and possibly sustain great loss.

It is not only essential in connection with astray packages that cases be numbered and marked with shipper's name, but of assistance in the making of our daily "freight received" record. The stock of large jobbing houses is divided into departments; the freight must be delivered immediately upon receipt to the proper department, and if the cases show shipper's name they are readily disposed of; but if shipper's name does not appear, it then becomes necessary to open up the case to ascertain the contents before the receiving clerk can make his record of receipt and dispose of the shipment.

We have for the last two years been trying to have some of our heavier shippers do as above requested, and for a time they have complied, but they gradually drop the practice, and we are again back to where we started. Possibly this is owing to the fact of the changing of shipping clerks. In order to have this rule made permanent we would ask this association to request the National Hardware Manufacturers' Association to instruct the secretary to furnish each member of that association with a card notice, large enough in size and bold enough in type to attract attention, a card to be conspicuously placed in the shipping room of the various manufacturers, so as to impress the shipper with the fact that it is now necessary to number cases and show shipper's name, in addition to the consignee and destination.

FREIGHT learns from George H. Sharp, traffic manager of Farwell, Ozmun, Kirk & Co., that the suggestions contained in Mr. Kirk's paper were received with hearty approval by the National Hardware convention, and it is expected that the association will take effective action. Mr. Sharp forwarded the following letters from officers of the railroads, which show how the suggestions are regarded by the carriers:

With reference to the proposition that packages bear a case number in addition to the name or initials of the consignee: I regard your proposition with great favor, and I earnestly hope that you will be successful in having it adopted. Without any trouble at all, I could furnish almost any num-

ber of actual instances where had an astray package borne a case number a great deal of time and annoyance would have been saved the consignee and shipper and also the railroad companies.

It is a common occurrence for us to carry into our large jobbing points a number of L. C. L. shipments consigned to some jobbing house, which have been shipped by say six different institutions; one case checks short; possibly we may have another case which checks over from another car. Suppose the two cars come from Chicago; we might almost be justified in assuming that the overage from one car filled the shortage from the other, while as a matter of fact the reverse would be true, and there would be an actual shortage and an actual overage, which had no relation to each other.

The jobbing house might not discover this for days, and probably weeks, after the shipment came into their possession. They would receive the right number of packages according to the expense bills, and would assume, the same as we do, that everything was all right. Later on, when they commenced to put the goods in stock, they would be unable to check out with their invoices, and I venture to say that it would require considerable time on the part of all concerned to straighten out an error of this kind.

I mention this as additional to the argument which you have advanced as to why packages should bear a number. I could cite other examples, but feel that your wide experience and the annoyance which you have felt for some time past renders it unnecessary for me to add any further argument as to why your proposition is a good one.

CHARLES T. BANKS, F. C. A.,

St. PAUL, Minn. Chicago Great Western Railway.

I am in receipt of your letter relative to numbering of all packages of freight and the placing of such numbers on the shipping tickets and way bills, to facilitate delivery at destination. Would state that to my mind this is a very important matter and should receive due consideration from the National Hardware Association. We have a great deal of trouble in making delivery of over-freight, and also in tracing freight short, without such information. In addition to the numbering of packages, the consignee and destination should of course be plainly shown and the old marks removed.

Your letter covers the case fully, and I would like to join with you in insisting that shippers follow your instructions.

F. J. CLEMANS, L. F. A.,

St. PAUL, Minn. Chicago, Milwaukee & St. Paul Ry. Co.

With reference to your letter regarding the proper marking of packages; also that they be numbered: I am very glad to know that you have taken this matter up, and can assure you its adoption will be highly appreciated by the railroads. It will not only be of great value to railroads but will also be of great value to shippers and receivers of freight.

W. M. STEPHENSON, G. A.,

Wisconsin Central Railway.

St. PAUL, Minn., November 4, 1905.

I wish to say that I have noted the attached with care with reference to the numbering of cases in addition to shipper's name being placed on same so as to be had for ready reference when freight is received by a jobber, especially on astray billing. I consider it very essential that the cases be numbered both for the information of the railroad companies as well as consignors and consignees, and it will be of vast benefit to the railroad companies when freight is astray and forwarded under rule 23, as referred to, to enable them to get revenue billing if none has been furnished, or to notify the line upon which the shipment was originally short as to the case being received.

This practice is in vogue with all large drygoods houses throughout the country and manufacturers of drygoods, etc.

They invariably keep track of their shipments by their case numbers, and it has been a great benefit to us in the checking of their shipments, especially on lake and rail stuff. I earnestly hope that the hardware men will see the necessity of numbering their cases.

C. F. SHANLEY, F. C. A.,

Chicago, St. Paul, Minneapolis & Omaha Ry. Co.
St. PAUL, Minn.

I entirely agree with the action you have taken in this case. Anything which is done to simplify the handling and identification of freight will result in improved service on the part of common carriers, as well as enable receivers of freight to properly and promptly identify packages and save innumerable claims as well as a great deal of correspondence.

I have been engaged for several months in an effort to prevail upon shippers to mark all packages, showing the name of the consignee and destination, with a pencil or brush on each package, and have met with considerable success in this direction. In addition to this if shippers would number their packages it would result in a great improvement to both the railroad companies and shippers.

G. W. PERRY, F. C. A.,

St. PAUL, Minn. Great Northern Railroad.

I have referred the inclosure, having reference to marking on cases shipped, to our loss and damage expert, and his verdict is to mark the cases, mark them substantially and mark them plainly. He states that it seems almost too much to expect that shippers will do this, that it is an exception rather than the rule where cases are substantially and plainly marked, such marks including necessary information, including State in which destination town is located. The proposition to show case numbers also would be a help, but the crying need seems to be that of securing plain, substantial and understandable markings.

C. P. EASTMAN, A. G. F. A.,

Minneapolis & St. Louis R. R. Co.

MINNEAPOLIS, Minn.

I beg to acknowledge receipt of your circular letter in regard to the proper marking of packages to enable transportation companies to comply with rule 23 of the Freight Claim Association, requiring transportation companies to immediately forward astray freight to the marked destination.

I was a member of the committee of the Freight Claim Association, and attended the meeting at which a recommendation for the adoption of this rule was passed, the committee having in mind the prompt delivery of thousands of packages, which prior to the adoption of this rule were being held awaiting receipt of the regular revenue billing for the shipments. We considered that the adoption of this rule, and the enforcement of the same, would relieve us of a large amount of such packages, and would also insure prompt delivery to consignees.

Now, I believe it rests with the shippers, as suggested in your memorandum, to see that all packages are properly marked and numbered, not only with shippers' name and address, but the name of the consignee should also be plainly shown on the packages both by the manufacturers and by the wholesale houses in distribution to the trade.

I can assure you that any action taken by Mr. Kirk, with this object in view, would be very highly appreciated by the transportation companies. While the application of this rule by the railway companies in some cases deprives the carriers of revenue, where agents at destination are unable to collect without revenue billing, this slight loss we consider is more than offset by the benefit derived from prompt delivery of valuable packages on which we succeed in collecting revenue, as otherwise we would be obliged to assume claims for loss on account of delay.

T. F. HUGHES, F. C. A.,

Northern Pacific Railway.

St. PAUL, Minn., November 3, 1905.

Milling-in-Transit Practice Benefits Public.

BY WARREN AIKENS.

THE practice of milling in transit, which many suppose to be a modern innovation, dates back at least twenty-one centuries, to the interval between the second and third Punic wars, when Carthaginian galleys, laden with grain at Saguntum in Spain, stopped with their cargoes at the Balearic Isles, where clumsy water wheels, turned by the swift running mountain streams (such as are unknown to the coasts of Northern Africa), furnished power for the operation of equally crude stone mills. The imitative Romans, upon their conquest of the Carthaginians, were quick to adopt this idea, and the same custom has obtained from that time to this.

Milling-in-transit rates, however, are contemporaneous with the rise of our great railroad systems. The exact date of their origin is somewhat obscure, but they first came into prominence with the development of the so called Granger lines of the West. They have played no inconsiderable part in the industrial growth of the country and the practice has come to be a matter of well defined policy for the public good.

In general, the object of milling-in-transit rates is to permit of the grinding of grain into flour at any convenient point between the fields of production and the centres of distribution. This prevents giving to the latter a practical monopoly of the milling business, scatters the industry more or less evenly over a vast area of country, thus benefiting innumerable localities; cheapens the cost both of production and distribution, and enables the by-products, which are of such value to our rural communities, to be available to local and nearby consumers without the payment of return freight. The benefit to the railroads from this arrangement is not so readily apparent, but anyone who figures out the advantage to them of having these local industries situated at various points along their lines will see that their object in making such rates is not at all unselfish. Among the most important of the benefits to them is the shipping in of mill machinery, lumber and supplies and the countless articles which are required for the families of the men who find their support in these industries.

The "Arbitrary" Milling Rate.

The rate itself, in any given case, simply consists of the regular grain rate from the farming community to some recognized market, intermediate to which the mill is located, with the addition of what is known in railroad parlance as an "arbitrary," or fixed differential, say of $2\frac{1}{2}$ cents. Let us assume, for instance, that wheat originating at a station in South Dakota is billed to a mill in Southern Wisconsin, "to be milled in transit for Chicago." Upon the arrival of the grain at the consignee's station it is stopped and unloaded. The miller pays the full freight from the point of origin to Chicago, plus $2\frac{1}{2}$ cents per 100 pounds (the

"arbitrary" varies). He is then credited upon the books of the railroad company with the quantity of wheat contained in the car, technically known as "tonnage," and he has the privilege of shipping to Chicago an equivalent weight of flour, in barrels or sacks, without the payment of any additional freight.

This effects a tremendous saving in the course of a year's business from what the miller would have to pay if he were charged the sum of the two locals, i. e., the rate from the South Dakota point to his station, plus the rate from the latter to Chicago, and enables him to compete successfully with Chicago millers. True, he has to pay $2\frac{1}{2}$ cents per 100 pounds more freight than they, but the cost of running his mill and other factors of expense are much less at a small town than in a large city. Also, he has the benefit of the natural difference in tonnage between what he brings in and what he ships out, as represented by the flour and by-products used locally, and he makes a greater profit on what he sells in his immediate neighborhood than can the miller in the terminal market who attempts to compete with him for such business. Conditions, of course, vary greatly, and perhaps not a few country millers may be found who will take issue with this rosy colored statement of the advantages derived by them from milling-in-transit rates, but such are the general advantages of them, nevertheless.

Established by Mutual Agreement.

In fact, so satisfactory has been this arrangement that, in the long course of railroad litigation which this country has witnessed, very few attacks have been made either upon the practice itself or upon any of its features, as established by mutual agreement between the railroad companies and the millers. So far as the writer is aware, only one important case has been brought before the Interstate Commerce Commission, and in that the contention of the plaintiffs was held to be without adequate foundation.

In this case, which was brought by the Listman Mill Company, of Crosse, the object was to secure, either directly or indirectly, the abrogation of an "arbitrary" of $2\frac{1}{2}$ cents above through wheat rates from points on the Southern Minnesota Division of the C., M. & St. P. Railway to Milwaukee and Chicago on wheat billed "to be milled in transit." The carrier's charges on wheat from these stations to La Crosse and Minneapolis were the same, as were also its rates on flour from each of these cities to Milwaukee or Chicago; but the milling-in-transit rates enjoyed by La Crosse, despite the addition of the $2\frac{1}{2}$ -cent arbitrary, were less than the sum of the two locals, while at Minneapolis shipments to and from the mills were made under the established in and out (local) charges. Transit rates at La Crosse from the territory involved bore the same relation to the regular tariff rates on wheat from that section that the rates on wheat to and

on flour from Minneapolis bore to grain rates from stations on the C., M. & St. P. Railway's more northerly Hastings & Dakota Division. Alterations in any of the carrier's flour rates from Minneapolis were accompanied by corresponding changes in the transit rates at La Crosse. The legality of the milling-in-transit rates was not questioned. It was, therefore, held by the Commission that no undue prejudice resulted to the La Crosse millers from the existing arrangement.

The sole effect of this case was to establish the fact that the practice of milling in transit or any of the rates growing out of it cannot be successfully attacked, except upon the ground of unjust discrimination, and, as above intimated, the arrangements thus far made between carriers and shippers on that score have been so generally satisfactory that no serious differences have resulted therefrom.

Clearly a Public Benefit.

In some quarters the hue and cry has been raised that milling in transit as a special privilege is menaced by the proposed governmental rate regulation, but it is clearly a public benefit, which, under any reasonable law, could not be disturbed. The President in his last annual message to Congress explicitly states that arrangements of this nature should be carefully safeguarded as agreements plainly in the interest of the people. It might be well to incorporate in any legislation enacted by Congress a provision setting forth the legality of milling-in-transit rates and correlated practices in unmistakable terms, although to anyone familiar with actual traffic conditions this would hardly seem necessary.

Grain is also billed to be cleaned in transit, corn to be shelled in transit, and other commodities to be treated in various ways in transit; while manufacturers have the privilege of bringing in raw materials, such as wood, and shipping out the finished products, such as furniture, at rates proportionately advantageous to them. Some State investigators, upon discovering such arrangements, have concluded that they were on the track of rebates, but a full knowledge of the facts has invariably put the matter in quite a different light. The more this practice can be extended, the greater will be the gain derived by the public at large. Of course, it may place some manufacturing localities at a decided advantage, compared with other communities less fortunately situated; but, even so, they are only given the natural benefit of their geographical position. Care should only be exercised that these privileges are not *unfairly* used to build up one section, locality, or interest at the expense of another.

In a short article of this kind it is impossible to more than touch briefly upon so vast a subject; but if the readers of FREIGHT wish to have more specific information on any of the points connected with it, the writer will be glad to answer their questions through its columns.

St. Paul's Coup Reduces Gulf Rates.

St. Paul's cut of 5 cents in grain rates to the seaboard has resulted in the reduction of the differentials by Gulf route based on 4 cents from Kansas City by one-half cent. Before the cut was made St. Paul contracted for the shipment via Buffalo of 3,000,000 bushels of corn. The new schedule of Gulf rates will remain in effect six months, and meanwhile St. Paul's new tariff will be allowed to expire, it is predicted, on December 31, which will leave the old Atlantic seaboard schedule in effect.

This arrangement is a victory for the Atlantic lines over their Gulf competitors, but may prove to be dearly bought when the six months' Gulf schedule shall expire. The springing of this coup by St. Paul at this time might seem to be without excuse, especially as it absorbed the entire reduction between the Missouri River and Chicago, because the seaboard lines had more business than they could handle; but, on the other hand, it was a recognized fact that the Gulf lines were preparing to gobble more than their share, and the lesson may have a lasting effect.

It has frequently happened that the Gulf lines have contracted for more grain traffic than they could handle, which resulted in a blockade at the terminals and tied up thousands of empty cars which were needed in the West for East bound business, and the differential was responsible for this state of affairs.

Large Orders for Locomotives.

The Pennsylvania Railroad, anticipating need for motive power in 1906, has secured an option with the Baldwin Company for 200 engines in addition to the 250 locomotives already ordered, and fifty of which are now in course of construction. Should this option be followed by the order the Baldwins will turn out 450 locomotives for this railroad during 1906. They turned out 525 during the last year. These engines are worth \$15,000 each, and will cost a total of \$6,750,000.

The Lehigh Valley Railroad has placed an order with the American Locomotive Company for twenty ten wheel fast freight locomotives. These engines will weigh 199,200 pounds, and will have a working steam pressure of 205 pounds, with a total heating surface of 3,269 square feet. The tenders will each have a capacity of 7,500 gallons of water and 12 tons of coal.

The American Company has also received orders from the St. Louis & San Francisco for twenty-five locomotives, to weigh 180,000 pounds, have a working steam pressure of 200 pounds and the tender to have a capacity of 6,000 gallons of water.

The Vandalia road has ordered from the same concern four simple Atlantic, five simple Mogul freight and three six wheel switching locomotives.

The Chicago, Rock Island & Pacific is reported to have also ordered twenty-five locomotives from the American Locomotive Company.

CAR SERVICE CHARGES FRANKLY DISCUSSED.

W. M. Prall, Manager of the Pittsburg Association, Principal Speaker at Meeting of Railway Club—Arguments of T. S. Kirk, of the Jones & Loughlin Steel Company.

THERE was an uncommonly interesting meeting of the Railway Club of Pittsburg, Pa., on November 24, at which W. M. Prall, commissioner of the Pittsburg Car Service Association, read a paper entitled "In Relation to Transportation." In his paper he outlined the whole history of transportation and described the conditions which led to the adoption of car service rules. T. S. Kirk, manager of the shipping department of the Jones & Loughlin Steel Company, took part in the discussion which followed the reading of Mr. Prall's paper. Among others who took part in the discussion was W. A. Terry, general freight agent of the Pittsburg & Lake Erie.

Mr. Prall spoke as follows, in part:

From time immemorial man has been struggling to improve his condition by improving transportation, as without proper transportation facilities goods can only be exchanged at prohibitive cost. Transportation in the old days was crude, but the methods were direct. No animal, vehicle or vessel ever awaited the convenience of any one. When their journeys were completed the cargoes were dumped and the carrier's responsibility was terminated. Carriers by land or carriers by sea were carriers only. In the early days of railroading the same practice obtained. Cars were not held for convenient unloading, the railroads always reserving the right when cars were unnecessarily detained to unload them either on the ground or in warehouses.

The facilities offered by railroad transportation was followed by an immense increase in the amount of freights transported, necessitating a change in practice, both on the part of the community and the railroads, many consignees in their own interests arranging for the operation of side tracks so that deliveries could be made directly to them at their place of business. The changed requirements for proper service were not fully understood, neither party appreciating the necessity for a continuation of the old practice of the immediate unloading of the car.

So long as cars were delivered on public delivery tracks the control over the car remained with the railroads, but when cars were delivered on sidings, the control in the unloading passed to the consignee, and where he failed in providing facilities so that cars could be unloaded promptly, it forced the railroads to hold out cars on their tracks, interfering with the movement of succeeding cars, which congested the terminals, increased the expense for service and added to the railroad's obligation.

A railroad must give reasonable service. The law demands it, but after its reasonable service the consignee should relieve the car of its lading within a reasonable time and the law affirms it. **If all railroad service was regular, and if all cars were unloaded immediately after placement, the saving both to the commercial interests and to the railroads would be enormous, while the benefit to the commercial interests would be even greater than the saving.**

Both parties agree prompt service is essential and that reasonable rules and regulations should be administered by the railroads and should be accepted by the consignor and consignee. The question is: What should be accepted as reasonable? Therefore, the necessity for an analysis as to con-

ditions surrounding the receipt, transportation and delivery of freights.

Every department of a railroad is organized to the end of making possible the free movement of its car equipment. Improvement in track, elimination of curves, lowering of grades, increased capacity of cars and power of engines are all to one end—car service; that is, quicker and more regular movement of cars to the end of increased tonnage, which is the only way to a possible maintenance of a low rate; consequently every problem before a railroad is to the final solution of the problem of rate making and car service, which are interdependent.

The Stock in Trade of a Railroad.

The stock in trade of a railroad is the service of its car, and the service of its car must be sold to the public, both to their advantage and the advantage of the railroad. The prosperity of one cannot be separated from the prosperity of the other. Increased tonnage movement is only possible where there is additional tonnage output for movement. There can be no complaint in regard to a rate that has not embodied therein a practical complaint in regard to transportation.

No matter what the resources of a country may be the transportation problem is always vital, because without proper transportation facilities markets cannot be made or maintained. The buyer is always anxious for the early receipt of his freights, and countries prosper in proportion to the time saved on freights transported, because time saved means a reduction in expense in the interest account. The oblique vision of the ordinary American as to ocean transportation is even more oblique in regard to railroad transportation. He knows the necessity for speed in turning out his product and he feels the necessity for expeditious transportation, but he fails in an understanding of his own acts which lead to delay in the handling of his freights.

The railroad must accept lading when accompanied by proper billing instructions, and by law is obligated to transport it in a reasonable manner, giving reasonable service between initial point and final destination, said service to be in accord with the contract, it being additionally recognized that every allowance made in the freight rate is an allowance made in the obligation of the railroad for service, and that reasonable service cannot be rated the same on commodity freights as it is on freights of the higher classes. The entire organization of a railroad is to the end of the movement of the individual car, and every expense is in relation to the earning capacity of the car.

An interruption in the process of manufacture in a large industry is immediately recognized in every department of that industry, as sales can only be made of the finished product and the revenue of the industry is entirely dependent upon its output. The same law applies to the railroad that applies to the industry. The railroad's revenue is entirely dependent upon the completion of the contract, and the completion of the contract includes the release of the vehicle; if the wheels refuse to move the entire process is stopped and the earning capacity is impaired.

It is reasonable to expect that the railroad should have sufficient vehicles with which to transact its ordinary business, but it cannot afford to have the unnecessary vehicle any more than the industry can afford to have the unnecessary machine. Large expenditures for maintenance, for equipment and for power can only be justified by increased ton-

nage, and it is the strenuous endeavor of the railroads at the present time to solve the problem of future transportation in advance of demands. If equipment, however, is to be used as warehouses on wheels, the new equipment being withdrawn from service, because of delay in its unloading, making it impossible for the railroad to increase its tonnage movement, there would be no justification for the purchase of new equipment.

First Car Service Rules.

Conditions were so bad in the year 1888, and so particularly bad at Omaha, that city being so congested that trains were unable to enter the terminals, the lumber dealer having piled up cars in what he thought was his own interest, in advance of his market, that the railroads introduced rules and regulations, allowing a reasonable time for loading and unloading cars, in accord with what their legal departments advised were their obligations and the obligations of the public. Although the success attendant upon the introduction of the rules was not all that was desired, still there was an improved service, and the organization at Omaha was followed by various organizations which at the present time have been practically extended to all railroad stations in the United States and Canada.

Car service associations having solved some of the necessary service problems, the railroads then further realized the necessity for a change in their regulations for interchange of cars, and in 1902 substituted what is called the "per diem agreement" for their mileage agreement, the per diem agreement automatically making a charge per car for each and every day that the car is on the rails of the connection, whether the car is moving or standing. Per diem is the recognition of a commercial obligation to pay a rental charge for a neighbor's property, whether the property is in use or not, so long as it has been accepted and is held for the borrower's purpose. Per diem is the beginning of a better understanding of the mutual obligations as between railroads. I say it is the beginning, because there is not a full recognition of the actual earning value of a car to its owner, yet it is a step in the right direction and makes plain the obligation of the transportation officials to their own companies.

Under the present agreements the railroads have two organizations—per diem, holding the railroads responsible for the continued movement of the car, and car service associations, which hold the public responsible for the release of the car, it being necessary that the two organizations should work together harmoniously to the end of car movement. The per diem organization holds the railroads under any and all conditions to the payment of an agreed rental charge. The car service regulations only hold the public responsible for the release of the car after the railroad has fulfilled its entire contract obligation for the movement of the car, there being no authority to apply a car service rule or regulation as toward a consignee or consignor unless the railroad has first fulfilled as parties of the first part every obligation under the direct contract for service on the individual car; therefore, no consignee need know that there is a car service rule applying to him if he fulfills the contract by removing the lading from the car after it has been reasonably delivered and held during the period of insurance.

No Question of Reciprocity.

In giving consideration to the contract, it is necessary to remember the carrier obligation, the tariff upon which the contract is based, the service which places the car and the time required for its unloading, which is the physical time necessary to remove the lading. There can be no question of reciprocity, because the railroad is simply selling its stock in trade, which is car service, and the obligation is simply to transport the lading in the car in proper service; therefore, it cannot be forced to sell that

which is not in its possession, or make a contract for impossible service.

The railroad must be reasonable in all its service, in the placement of cars for loading, in the handling of cars at loading point, and it must within a reasonable time transport the car after loading, and if it fails in its transportation, in accord with its direct contract, and the failure is to the detriment of the interests of the shipper or receiver, there is redress in the courts. Under no circumstances can the service on one car excuse the railroad for poor service on another car, nor can the poor service on one car excuse the consignee from the direct responsibility of unloading other cars that may be delivered after reasonable service.

No railroad official would knowingly promulgate a rule or a regulation that would delay car movement; to the contrary, every effort is to the end of an average increase in the number of miles per day of loaded car movement, it being fully recognized that increased tonnage movement is dependent upon expeditious car movement. If a given number of cars can handle a given number of tons of freight during a period of one month, and the adoption of any rule would regulate service and increase the tonnage by 10 per cent. or 15 per cent., it is a practical addition to the railroad's equipment of that per cent., and the results in freight transportation would be exactly the same as the results in passenger transportation, or in the handling of the transit company's cars in urban service, it being an easy matter to mathematically demonstrate the benefit to all in interest when the railroad improves service; consequently, all railroad employees are heartily in accord with the desire of the public that car performance should be improved.

The demand that cars should move a certain number of miles per day has arisen from a misunderstanding of the actual conditions. The public does have the right to require from the railroads proper equipment and reasonable service, provided that they come into court with clean hands and show that the disability is entirely with the railroads, and that delay has not been primarily caused by their slow loading and unloading or delay in furnishing disposition or reconsigning orders. The expense account for fixed charges in the large cities of the United States is becoming so great that something must be done to relieve the situation, and there must be a full understanding by both parties in interest that the storage of freights at terminals must be along the line of the least resistance, as storage is paid for by the community, whether the storage is in cars, or properly built warehouses or bins; therefore, the question is as to an understanding of just how the necessary stock shall be stored.

Duty of the Community.

When stored in railroad equipment, everything pertaining to the expense of operation must be considered, the expense of the main line, the expense of the sheds, the roadways, the rails or necessary leads and hold tracks, the expense of switching the car to the consignee, and the expense of handling the loaded car or the empty car from the consignee. The law never contemplates that a public carrier should operate at a loss, and the carrier always has its defense when it makes an exhibit, as against impracticable demands, and its interests must always be provided for in the rate; consequently, whenever the community adds to the actual expense of transportation, the expense is exhibited in the rate, and where a community is in competition with other communities it is to the advantage of that community to realize its possible benefit in reducing the expense of transportation by relieving the railroad of the further care and warehousing of its tonnage after it is entitled to its cars' release.

The car service charge in no way adds to the freight rate. The car service charge is never a part of the freight rate, there is no car service charge on 95 per cent. of all

the tonnage handled, and there should be and would be no car service charge if cars were not delayed beyond the period of insurance; consequently, the car service charge is never made by the railroad until after it has been forced into involuntary warehousing, and every railroad in the United States would like to get rid of the warehousing obligation. The carriage of goods between two points within a minimum time invariably results in the decrease of the interest charges in the bank accounts of the business community, as nothing serves them better than dispatch in the handling of their freights to the end of the completion of their contracts and their settlements with their correspondents. The benefits to them are actual, and so with the benefits to the railroads, as expeditious handling of freights either results in the handling of tonnage with a decreased equipment both of cars and engines, or in the increase of tons per mile per car.

If every community was independent of all other communities, possibly there could be a continuation of improper service without the community being vitally affected, although that is problematical, but where every community is in direct competition with every other community and an aggregation of communities make a nation, which is in direct competition with all other nations, it is essential that every possible understanding and agreement may be arrived at that will eventuate in improved car movement at decreased expense.

How the Problem Must Be Solved.

The transportation problem, therefore, must be solved in its relationship to the interests of the business community, the community recognizing that its obligation and the railroad's obligation is interdependent. It should also be recognized that the interdependent is not only as between individual consignees and the railroad, but it is between the individual consignee and all other consignees which the railroad serves, and any act of omission or commission of either the railroad or the community that decreases car movement adds to the expense of operation.

The rules must be legal, they must be equitable, and they must be expedient, because expediency is necessary in order to attain to harmonious relationship with the public. They must provide for a reasonable time for the loading and for the unloading of the car. They must provide a reasonable time for the reconsignment of the car and for the reordering of the car when the contract, which is based upon the tariffs, allows the consignee to distribute his freight at the original rate after arrival at the terminal as designated by the consignor. The practice under the rules must provide for irregular service on the part of the railroad, and for acknowledged conditions under which both the railroads and the public operate. Provision, therefore, must be made for proper record at the stations to the end of the supervision of the agent and the yardmaster over service and for information to the consignor or consignee necessary for his observance of the contract.

A common ground must be developed so that everybody may have an understanding of his responsibility for the handling of the individual car, because cars cannot be considered in the aggregate excepting as an aggregation of individual cars, the movement of the aggregation of cars being entirely dependent upon the movement of the individual car; therefore, the necessity for sequence in movement by preparation on the part of the consignee to accept and unload the cars as tendered so that the railroad can continue on the succeeding car regular service to the consignee. It must be additionally remembered, however, that "individual convenience is subservient to the public good," and the rules must be made to the end of the greatest good to the greatest number. When they attain to car movement they are in the service of the public and the public should not withhold their hearty co-operation, because they insure to everybody first, last and

all the time equal consideration and mutual benefits, so concisely expressed by our strenuous President as a "square deal."

What Mr. Kirk Said.

Mr. Kirk, in his speech, took the position that the responsibility for the lack of car facilities did not lie entirely with the manufacturing interests on account of their converting freight cars into warehouses. While he admitted that this charge was well founded, he maintained that the shippers and receivers were not altogether responsible for the shortage of equipment. He said that one of the sources of the shortage was due to empty car haulage. These cars, he said, might be the property of railroads remotely located and for which there was no home loading, or they might belong to private and privileged corporations, and were useless so far as general transportation was concerned. If every car were available for freight in any direction, without regard to home roads or private ownership, he said the shipper would be 100 per cent. better off, instead of relying, as he had to do now, on only about 50 or 60 per cent. of the cars he actually required for his business.

The speaker said that it was well known that the problem which confronted the railroad as well as the business world was the means for transporting commodities from one point to another profitably and effectively. Despite the enormous outlay every year for betterments, the railroads found themselves still unable to meet the demands of shippers for cars. Vast stores of freight awaited shipment at the point of origin, and there was, he said, consequent loss of revenue. He suggested the elimination of railroad and individual ownership of freight cars, and in place of this to form what he termed as a rolling stock company. His idea was that through this company freight cars should be controlled and distributed; when cars were found stored they should be moved to the point where they were required, and should be made revenue producers and freight carriers. In regard to this suggestion, Mr. Kirk said he had no doubt that many persons at first would view the idea as impracticable; but he said he thought that after mature deliberation they might reach a different conclusion. He cited the case of the Pullman Company as controlling all parlor cars with satisfaction to the public and the carriers, and did not see why it should not be possible to control freight equipment in a somewhat similar way.

Mr. Prall-Takes Issue With Mr. Kirk.

Mr. Prall declared that to distribute all freight cars through a clearing house was beyond the powers of the brainiest American. In a letter to the editor of FREIGHT Mr. Prall says that Mr. Kirk admitted the immensely increased tonnage movement and the improvement in service. Mr. Prall's letter said:

"Mr. Kirk spoke of certain material stocked in his works awaiting cars for shipment. He stated the condition and not a theory, but it was answered by

me by a statement of actual car detention on the part of his plant, and my statement that I would furnish car numbers and initials, and if he would unload those cars it would decrease the car shortage."

In regard to the Ohio shippers and carriers' agreement Mr. Prall said in his letter:

That agreement, with the exception of the additional time allowed, was made entirely on the lines of my practice. At the first conference, by request of the railroads, I was present, fully explaining the practice in all associations of which I had charge, and the practice that I should introduce in the Pittsburg district, and I there maintained that if my rules were thoroughly understood the evils that they complained of would be materially modified; that the real complaint was not as to the time allowed for the unloading of the car, but it was as to the time allowed where consignees had the privilege of distribution, or where consignees reconsigned a car, I maintaining that wherever the traffic department granted a privilege, the car service rules must provide a time for the privilege.

In Ohio, up to the present time, there is no rule governing, while in the Pittsburg district, in Indiana, in the territory of the Central Association with headquarters at St. Louis, in Arkansas and the Northern Pacific slope there is a rule covering cars with a privilege, the rule having been introduced by me.

At St. Louis and at Pittsburg any committee from any body of interested shippers or receivers of freight has a hearing. I am only too glad to explain just how rules can be applied in the interests of both the public and the railroads, first explaining the rules, then the practice under the rules, then the reason for the practice, and every receiver of freight is told that if he has a complaint that complaint will be investigated by the representative of this association, and their records and complaints will be listened to. It will then be laid plain as to who is in fault; the result almost invariably is the payment of all properly accruing car service charges by the consignee promptly, the consignee sending to this office all bills that he claims have been incorrectly assessed, I agreeing that if I cannot prove that those bills are correct, they shall be withdrawn by cancellation.

It is also made plain that the burden of proof lies with the railroad, and if the railroad is 99 per cent. right and 1 per cent. wrong, the charge is wrong. Car service is either right or it is wrong. There can be no compromise and the benefit of all doubt goes to the public. Shippers in the Pittsburg district as a rule now realize that we have become a complaint bureau for the investigation of the railroad's service.

Decisions on Passenger Fares.

The case of A. L. Artz against the Seaboard Air Line Railway has been decided by the Commission in an opinion by Commissioner Prouty. The proceeding related to the reasonableness of interstate passenger fares greater than the sum of local fares between certain points. It appears that the carrier charged a passenger fare from Fernandina, Fla., to Savannah, Ga., of \$5, or about 4 cents a mile, while a rate of 3 cents per mile is fixed by State authority for fares within the States of Florida and Georgia. The carrier's line between Savannah and Fernandina or Jacksonville is more expensive to maintain than other parts of its system. The freight traffic is light and the local passenger traffic is insignificant. A reduction of this interstate passenger fare would not contribute to development of the section or increase materially the

passenger business of the line. Reducing the fare to 3 cents per mile would render the earnings of this part of the system less than the average upon the whole system and less than the average of other roads in that part of the country.

The Commission holds that ordinarily the through interstate passenger fare should not exceed the sum of local fares, but there is no specific requirement in the regulating statute to that effect, and the only question for determination is whether the fare complained of is unreasonable; and that upon all the circumstances of the case the fare in question cannot be deemed excessive and the complaint must be dismissed.

Another passenger case was that of R. C. Brabham and others against the Charleston & Western Carolina Railway Company and the Atlantic Coast Line Railroad Company. This was decided by the Commission in an opinion by Commissioner Cockrell. It is somewhat similar to the Artz case, in that the complainant claimed that certain interstate passenger fares of the defendant railway companies were unreasonable in that they exceeded the sum of local charges between the points in question. The facts found by the Commission in this case are as follows:

The carriers' charge for passenger fare from Ellenton, S. C., to Augusta, Ga., twenty-two miles, is 80 cents, and from Jackson, S. C., to Augusta, fifteen miles, 60 cents. The local passenger fares in South Carolina and Georgia are controlled by a maximum of 3 cents per mile fixed by State authority. The distance covered between the points mentioned is via the Charleston & Western Carolina, the other defendant, the Atlantic Coast Line Railroad, having certain trackage rights over part of the other line. All fares collected by the Atlantic Coast Line Railroad Company for transportation between Ellenton or Jackson and Augusta are turned over to the Charleston & Western Carolina Railway Company. The financial condition of the latter company is poor. The country along the line of this road, though long settled, is sparsely inhabited and the traffic is light.

The Commission holds that the rates fixed by the State Railroad Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive, and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic; that a railroad company is entitled to a fair return upon the value of that which it employs for the public convenience, and that in view of all the facts in this case, and previous decisions of the Commission cited, it is not apparent that the interstate passenger rates complained of are unreasonable.

Secretaries of commercial and public bodies throughout the United States are invited to report their proceedings to FREIGHT. All subjects of general interest relating to freight rates and transportation questions will be published in detail. Communications of this kind should be addressed to Editor FREIGHT, 116 Nassau street, New York city.

Subscribe for FREIGHT; \$3 a year.

Freight Rate Legislation, Past and Present.

BY J. S. POTTS, OF RICHMOND, VA.

THERE has been so much written pro and con on regulation of railroad freight rates that I have decided to take some notes from my scrap book and bring to light some of the opinions expressed twenty years ago, when the Reagan Bill passed the House, affixing maximum rates, and was defeated in the Senate for this very reason. Senator Sherman, speaking on the Reagan Bill, said:

"I do not think Congress has the right to impair the obligations of contracts. I do not know by what authority Congress can change the contract made between the State and the individual, as is proposed in the Reagan Bill, by providing that no railroad in the United States shall charge more than 3 cents a mile, although its construction may have cost \$1,000,000 a mile, and although the State may have authorized the railroad to charge 5 cents a mile. Congress cannot change the contract between the State and an individual or corporation."

Further on Mr. Sherman says: "I believe that the Supreme Court would hold without question that that provision of the proposed law is unconstitutional, but I do not want to pass an unconstitutional law merely to allow the Supreme Court to reverse it." It is a matter of history that the Reagan Bill was defeated and the Cullom Bill was finally passed. Mr. Sherman's words were those of prophecy, for the long and short haul clause of the Cullom Bill was a near approach to a governmental control of freight rates, but when it came up before the Supreme Court the ruling of the court was that a railroad could make a lower rate for a longer distance than a shorter one to meet water competition. Judge Cooley went further and admitted this ruling in competition of cities, as evidenced in his opinion in the case of the City of Danville against the Richmond & Danville Railroad.

Another scrap may be interesting. Along about the same time in the '80s the Supreme Court of Mississippi decided the various railroad supervision cases in substance as follows:

"The opinion in the case of the Yazoo City Railroad, which is wholly operated in the State, decides that the supervision of that railroad is exclusively in the State. The court says in regard to other lines that every railroad train, from the time it enters the State until it leaves the same, is controlled by the State law and police regulations, and not by the General Government, provided only that this power is impartially exercised and without disturbing commerce. The right to affix their own tariff when within fixed limits is a vested franchise right, and will be upheld up to the maximum of the limit granted in the company's charter. Subsequent legislation cannot restrict it where no maximum rate is provided in the charter,

but only a provision that the company shall have the power of affixing the same."

It would appear from the foregoing that if the present Congress passed a bill giving power to the Interstate Commission or any other tribunal to make rates for the railroads, that not only would the Supreme Court reverse it, but a question of States' rights would be involved.

To leave the past for the present, I was impressed by the article which appeared December 7 in the *Manufacturers' Record*, written by Senator Morgan, and I note that he is in line with Senator Sherman when he says: "If the provisions of the charter do not fix the rates of charges for transportation as part of the charter rights or duties, the common law requires them to be reasonable; and no legislative body or court can lawfully confer upon such corporation the power to charge rates that are unreasonably high, or compel them to accept property for transportation at rates that are unreasonably low."

As it is an undisputed fact that the general schedules of freight rates is lower in the United States than in any other country on earth, it cannot be claimed that they are unreasonable. Senator Morgan makes a good suggestion when he says: "If the Government would control freight and passenger rates on the railroads, the most conspicuous opportunity and the plainest line of duty is to increase the competition, wherever it is possible, by improving the navigation of the water courses, all of which belong to the people."

What is needed more than anything else is greater facilities for transportation. Let Congress make liberal appropriations for rivers and harbors, deepen all rivers to head of navigation for deep water traffic, build a canal from Chesapeake Bay to the Ohio River, and the rate problem would be solved. In these days of rapid transit the canal as a factor in transportation has been slighted, but the day will come when this canal from the Chesapeake to the Ohio will be built, and coal from Pittsburg and grain from the West will reach the Atlantic at the Eastern seaboard by this route. At the present time railroads are moving freight less than fifty miles in twenty-four hours, and canal barges towed by electric motors could give better service than the railroads are now giving the public.

SHIPPER PRAISES THE RAILROADS.

J. D. Hollingshead, of Chicago, Opposed to Government Regulation and Says the Present Management of Freight Traffic Is "All Right."

To the Editor of Freight:

SIR—I have read every word of Judge Grosscup's plan, but I maintain it is dead wrong that the Government should interfere with the railroad traffic of the

United States any more than it should interfere with any other business. I am a great believer in letting well enough alone, and the present management of the freight and passenger traffic of the United States is all right. There are many reasons why lower rates of freight should be made on commodities to large centres, where raw material can be collected in such quantities as to build up business. If the Government assumes to control the freight rates of the United States, it had better adopt a tariff something like letter postage, so that you could put a stamp on a car and let it go to any place in the United States at the same rate, no matter what the distance might be. This would give everybody a square deal surely, and might possibly be figured out along these lines.

There is no trouble about the business men of these United States and the railroad managers of the United States agreeing on what are reasonable rates for handling the traffic of this country, and it should be left to them, and them alone, for they have had thorough training and experience in this line of business, far superior to that of our courts of justice and United States Senators. It is a nice thing for them to have something to talk about when they get down there in Washington. They need something for entertainment, and if they would take up the question of boards of trade and chambers of commerce, which are composed of a large body of speculators, buying and selling millions of dollars' worth of products of various kinds that never did exist, and pass laws that would regulate this kind of wholesale gambling, it would have more to do with regulating business in the United States than anything else the writer can think of.

The little money that the handlers of meat products in the United States, as well as cereal products, make from rebates that they get out of the railroad companies is a very small item compared with what those large corporations make out of board of trade deals, where they either sell or buy such an enormous quantity of any one commodity as to affect the markets out of all reason. I believe that there should never be a deal made of any kind where the goods are not delivered in a reasonable length of time, and paid for according to contract, and no man has a right to sell that which he has not got, with the expectation of settling his deal on margins. If you care to take up this argument for discussion through your journal, I think you will find a great deal more in it than in the freight problem, and do not think for a minute that I am sore over being caught in this kind of deals, for I never speculate in any way other than in handling actual commodities.

A few more words on the freight question: The Government control of fixing rates would have a tendency to bring every freight rate down to the lowest possible minimum point that the judgment of our commissioners should think would be equitable. Now, in that case, it would have a tendency to reduce wages on all railroads, the common labor, and, in fact, the

whole line of labor employed in transportation. It would have a tendency to economize, in the way of making cheaper cars, running fewer trains and giving the public less accommodations, and as a handler of commodities for the last twenty-five years, let me say that many is the time we could not get cars in which to move our products, and we are in that shape today. There are not enough freight cars, when business is lively, to handle the commodities of the country, and any law that will have a tendency to restrict railroad building, and the building of railroad equipment, the double tracking and improving of the railways of the country, is certainly injurious to the public on the whole.

Our country would not be worth twenty-five cents on the dollar of what it is today, take it one acre with another, one city with another, if it were not for the railroads, and the point of making lower rates to centres where large manufacturing interests have centred than to interior points is all right. We must have raw materials concentrated in order that business may be done in an economical manner. Then when the goods are manufactured and shipped back to the interior points, they get the benefit of the lower rate to the centres, in the way of goods being manufactured for less money than if the full rate was paid. In other words, what is the use to be kicking about well enough? Let it alone. The country is prosperous, everybody is happy except a few chronic kickers who will always exist, no matter what the conditions are.

The Interstate Law of allowing one firm no less rate of freight than another looks equitable and right on the face of it, but the same idea applies between a large manufacturer and a small one that does in the concentrating of stuff in centres to manufacture. They really are entitled to a less rate, on the same basis that a wholesale man sells for a less per cent. than a retail merchant. For my part, as a business man for many years, I cannot find much fault with the railroad companies. They are gentlemen and men always willing to discuss matters and meet you half way, and if the necessity demands, make as low a rate as is possible for them to make in every instance.

One thought more. If this idea is carried forward into politics, the party which advocates United States control of the transportation problem will find a very strong combative force in the railroad managers and all other employees, and I am frank to say, all of the very best commercial interests of the country, and that means a good deal. Personally, I think it should be kept entirely out of politics. There is another question that might be taken up, which is the building of the Panama Canal. Instead of the United States undertaking to put that through, it should be let to the lowest bidder on a specified contract, the term of years to be considered in building the canal. There are plenty of firms who would bid on this contract, and it would cost the Government about one-half of what it will cost the way it is going at it.

CHICAGO, Ill.

J. D. HOLLINGSHEAD..

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WE maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from shippers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically. They should be addressed to **EDITOR FREIGHT**, 116 Nassau street, New York.

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WHILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

ALEXANDER WOOD GAY.

ON Christmas night, Alexander Wood Gay, editor of **FREIGHT**, passed to his eternal rest, after an illness lasting but a few hours. In his death this publication loses a highly thought of and most valued member of its staff, and it wishes to place on record the great esteem in which he was held, not only by **FREIGHT**, but by newspaper circles in general in New York city. He was a man of brilliant attainments and of sterling integrity, and, moreover, a loyal friend. A hater of sham and a lover of truth, of a generous nature and happy temperament, he made friends where he moved, and enemies never. He was a fearless and finished writer; he had a wonderful grasp of the subjects upon which he wrote, and while editor of **FREIGHT** the compliment was paid him of being consulted on traffic questions by the best informed traffic managers and shippers in the country.

Mr. Gay was born at Tompkins Cove, Rockland County, N. Y., thirty-six years ago, and after graduation from St. John's School, Ossining, N. Y., in 1888, he took a special course in Columbia College. In his school and college life he had written frequently for the *Tribune*, and after leaving Columbia he received an appointment on the *Tribune* staff, where he remained for several years, rising from reporter to the important position of copy editor. He became financial editor of the *New York Press*, and later was dramatic editor for the same paper. Subsequently he founded the magazine *Cold Storage*, which was devoted to the interests of the refrigerating industry, and his work as editor was so successful that the paper is today one of the leading authorities on refrigeration in the world. *Cold Storage* was sold and consolidated with the *Ice Trade Journal*. Two years ago Mr. Gay became editor of **FREIGHT** and gave his whole heart and mind to transportation subjects, especially the question of rates.

He was the son of the late Rev. Ebenezer Gay, who for many years was at the head of the House of the Good

Shepherd, at Tompkins Cove, N. Y., and who was otherwise prominent in church work. He was a direct descendant of John Gay, of Massachusetts, who was a poet and a man of the highest literary attainments and reputation. Mr. Gay was a member of the University Glee Club and was a finished musician, both on the piano and great organ; also the composer of a number of musical compositions. For many years he sang in the choir of Trinity Church, New York city.

Four years ago he married Miss Edith De Fontaine, who, with his mother, Mrs. Josephine H. Gay, and one child, survive him. His funeral was held at his home in Summit, N. J., Wednesday morning, and his body was taken to Bridgewater, Mass., where it was buried by the side of his father.

"Who dies in youth and vigor dies the best."

WE publish in this number, for the benefit of lay as well as legal readers, the brief of John B. Daish on the constitutionality of the Grosscup plan for the amendment of the Interstate Commerce Act. The brief supplements the legal articles of Judge Grosscup heretofore published in

**Mr. Daish's Brief
on Constitutionality
of Grosscup Plan.**

FREIGHT. The ability of the author of the brief is too well recognized to need any comment at our hands. To

the layman we commend it for its logic and common sense; in it the lawyer will find its statements and conclusions fully justified by the citations of the cases and references to the text writers. It is sound, logical and, from a layman's point of view (and we can speak only from this point), seems to cover the situation completely.

The brief holds that, as it is doubtful whether the Congress can delegate legislative power to another body, whether that body be legislative, or executive, or judicial, it will be dangerous to attempt to relieve the present situation by conferring upon the Interstate Commerce Commission the power to investigate a rate and ascertain whether or not it be unreasonable, and having found it unreasonable, substitute a lower rate.

To fix or name a rate is a legislative function, and to ascertain whether an existing charge is reasonable is a judicial function. The co-ordinate branches of the Government must be kept separate and distinct. The advisability of the Government to undertake the naming of all rates is not only unnecessary in our present situation, but no one seriously advocates it. What will cover the situation is that there shall be a complaint that an existing charge named by the carrier is unreasonable or unjust; upon this complaint it is

purely a judicial function to ascertain whether or not the complaint is justified; this function having been exercised, it is only necessary for the court to exercise another purely judicial function and injoin the charging of more than the court shall have found to be reasonable under the facts and circumstances of the particular case. That there are serious doubts of the constitutionality of other partly matured plans is certain. That a court, having jurisdiction given to it by the legislature, can adequately handle the complaints and give adequate relief, is not only logical, but seems to be entirely in accord with the law as laid down in the books and cases.

The author of the brief cites several cases where the courts, both under the common and the statutory law, have exercised full jurisdiction in the class of cases which are now up for remedy, and as laymen we can see no reason why a continuation of the exercise of the same jurisdiction should not prevail. That there be no doubt about rights, there is recommended a substantive statute, and that there be a remedy for the infraction of those rights, it is suggested that Congress should provide judicial machinery. To throw the individual citizen into court upon his own resources would be no remedy worth the name, and no situation would receive attention, on account of the costs and trouble incident to the enforcement of the remedy. With the power, influence and money of the United States to prosecute the cases, it is to be hoped that an executive with only moderate energy will bring about a correction of existing abuses. The general welfare of the people and the necessity of the case make such a method expedient.

THE real purpose of the secret conference recently held between the representatives of various Western carriers and the Interstate Commerce Commission will probably come to light only after the lapse of considerable time. It is possible that the cause of this conference was the result of the

**Significance of
the Rebate
Conference.**

widespread public opinion that, notwithstanding the penalties provided by the Elkins Act, rebates still exist. Perhaps it was thought that a "gentleman's agreement" to cease the pernicious practice of giving rebates to shippers would throw a wet blanket over the demand for adequate legislation for the correction of existing abuses. Perhaps it was thought that a bait of this kind would be accepted by those who urge serious objections against the existing conditions. Perhaps, and what is more likely, the influence of the Chief Executive in his last message was what brought about this conference. Said the President: "The best possible regulation of rates would, of course, be that regulation secured by an honest agreement among the railroads themselves to carry out the law. Such a general agreement would, for instance, at once put a stop to the efforts of any one big shipper or big railroad to discriminate against

or secure advantages over some rival; and such agreement would make the railroads themselves agents for enforcing the law."

There is great force in the statement that if the carriers should, each for himself, agree to abolish rebates and to "peach" on any other carrier, this evil of the present system would be eradicated more promptly than even by a strenuous execution of the Sherman Anti-Trust Act, the Elkins Act and the sections of the revised statutes relating to conspiracy. The best possible informer upon any subject is one who has been in the same line of business, up to the same tricks and familiar with all of the devices. The aid of such people, particularly in connection with railroad transportation, where the jealousies of human nature in securing tonnage is present at all times, would be of the utmost advantage to the Government. We hope the men who held this star chamber conference with the Commission were sincere. We hope their resolution is not one of the usual new year type. We trust we are not hoping against hope.

Rebates are not the only abuses incident to present transportation management. Those who believe that the entire situation is covered by the abolition of rebates are deluding themselves. There are many other objections, and the giving of rebates, however effected, is simply one feature of the question. Beyond rebates is another vast field, studded with inconsistencies, discriminations and unjust practices, and until an adequate remedy is provided for the correction of all transportation abuses, it can be definitely predicted that they will continue to work. It is understood from the official announcement of the conference that no pledges were made by the traffic officials looking to the amelioration of these conditions in their behalf. If they were sincere they might, as well have included this as a second section of their promise.

WE suppose there will be weeping, wailing and gnashing of teeth on account of the abolition of passes by the Pennsylvania and other of the railway systems. We say, we suppose, for we know nothing about the benefits of free transportation, nor are we conversant with the advantage of carrying a small card in a card case, whereon is embossed the year large enough to be seen across the aisle of a coach. We are more inter-

ested in the question whether or not the denial of these cards will keep up; whether or not consideration of the carriers by Congress, the legislatures and municipal authorities will continue the same in the absence thereof; whether or not there was any real cause for the order; whether or not it was as a result of the acts of "no pass" Baker, or the literal reading of the Scriptures by the officials of the Pennsylvania Railroad.

In recent years we have heard little about the effect of passes; no one has raised any fog about the matter if he had one, and those who were denied knew not how

to pull the wires—so they say. In the good old times it was charged that the price of a ticket was more than it ought to be because of the large number who were carried free; in those days books were written on the subject, and all of the reasons pro and con were urged; but there has been a change, apparently, and we would like to have some one thoroughly informed let us have some light upon the subject. Will the order be permanent and will fares be reduced?

THE suggestion made by one of our correspondents concerning his inability to ascertain changes in freight rates is well worthy of consideration. The section of the present Interstate Law providing for posting of rates and the publication of them would seem

Publish Freight Rate Changes in Bulletins.

to afford all that is necessary in this behalf. Rates, however, are in general only posted at points of origin and not at points of destination. This makes it extremely inconvenient for the purchaser of goods to ascertain what amount it will be necessary for him to pay on the commodity. It is true that the rates can be obtained on application to the Interstate Commerce Commission, but this frequently requires more time than the commercial necessities of the transaction can bear. We see no reason why the Commission should not, from time to time, issue bulletins showing the changes of rates upon those classes of commodities which furnish the largest quantity of tonnage. The daily consular reports issued by the Department of Commerce and Labor might be taken as a precedent for this publication, and if the Commission should issue weekly or monthly a bulletin showing the base rates we believe it would be a great convenience to business men, and well worth the cost and energy expended.

THE recommendations and resolutions proposed by the constituent organizations for adoption by the National Board of Trade at its session in Washington were somewhat indicative of the feeling of business men regarding the amendment of the Interstate Commerce Law. There are propositions by eighteen organizations on this subject. Five of the organizations are opposed to giving to the Interstate Commerce Commission

How Business Men Regard the Rate Question.

power to name a rate in lieu of one found by them to be unreasonable; two propose to have the finding of the Commission confirmed by a court before it shall take effect, and only three are in favor of giving full power to the Commission to inquire into a rate and to substitute a new rate if it be found by them that the one complained of be unreasonable. For the abolition of rebates three organizations have proposed resolutions; four wish that there be conferred upon the Commission jurisdiction over private car lines. Pooling has received attention by three organizations that favor a

legalized and supervised pooling arrangement for the carriers. One organization frowns on the publicity of matters relating to the railways, stating that the intent of the Constitution is to secure privacy and security of the citizen from all attempts of the Federal Government to inspect his books and papers, and that the corporations ought to be equally immune.

UPON the reassembling of Congress a bill embodying the plan of Judge Peter S. Grosscup for the Government regulation of freight rates will be introduced.

Since FREIGHT began the advocacy of this plan, less than six months ago, it has received the unqualified indorsement of the leading business interests of the country. In fact, it is the only plan thus far evolved that has the support of recognized shipping interests. Business men feel that it is a business plan—one that will meet the demands of changing commercial conditions.

The plan has so many advantages over any other that we feel confident of its ultimate enactment into law.

OPPOSED TO RAILROAD REGULATION.

W. C. Bradley, Cotton Factor of Columbus, Ga., Thinks the Government Should Have No Control Over Carriers.

To the Editor of Freight:

SIR—We have your esteemed favor and in reply beg to state that we are thoroughly opposed to the measure you are advocating, as we do not believe that the Government should any more be given control of the railroads than of any other corporations. We think the proposed action will establish a very dangerous precedent, and it is our purpose to do everything possible to defeat any measure having for its object the regulation of freight rates by the Interstate Commerce Commission or any other tribunal that may be put in control of these matters by the Government. We feel that this measure is one among the many populist ideas that have sprung up throughout the country within the last few years.

W. C. BRADLEY COMPANY,

W. C. BRADLEY, Pres.

COLUMBUS, Ga., October 28, 1905.

W. C. Bradley, Columbus, Ga.:

DEAR SIR—Replying to yours of October 28, it is clear from your letter that you have not studied the Grosscup plan. This plan does not give to the Interstate Commerce Commission or any other tribunal, except a court, the right to pass upon the justness or reasonableness of a freight rate. If you have studied the Grosscup plan you certainly would not call it a

populistic idea. Even conservative railroad men themselves, *for the protection of the railroads themselves*, say that a tribunal of some sort is necessary to wipe out prevailing abuses, such as rebates, unjust discriminations and practices, and charges of private car lines, terminal and switching railroads.

The Grosscup plan has been individually indorsed already by thousands of conservative and prominent commercial firms throughout the United States. Your letter was decidedly surprising to us. We have been accused by a few cranks who are in favor of placing the absolute rate making power in the hands of a Government commission of being paid by the railroads to advocate the Grosscup plan, but you are the first one who has suggested that "this measure is one among the many populist ideas that have sprung up throughout the country within the last few years." Just read over the plan again carefully, and let us hear from you again.

EDITOR FREIGHT.

NOVEMBER 8, 1905.

To the Editor of Freight:

SIR—I beg to state that you are mistaken in your statement that I have not studied or given the Grosscup plan proper consideration, or else I would strongly urge its adoption. I have always held very decided views against all attempts on the part of the States, or even the United States Government itself, to control or regulate in any way the affairs of the railroads. In other words, I see no reason why this class of property should be discriminated against. Private individuals investing their money in railroad securities should be accorded the same treatment as investors in other commercial corporations. I do not believe that the General Government should attempt to regulate freight rates any more than it should the prices or gross profits of other large industrial concerns. I have always felt that competition alone should regulate these charges, and I am firmly convinced that it would be better for us all if all State and interstate railroad commissions were abolished, and people were allowed to invest their money in railroads at will, and without the constant apprehension of having the earnings of their property at the mercy of the railroad commissions in the different States, which, as you must know, are largely political in their nature, being at all times dependent upon the will of "the good people" for their continuance in office.

W. C. BRADLEY COMPANY,

W. C. BRADLEY, Pres.

COLUMBUS, Ga., November 13, 1905.

Mr. Bradley seems to out-railroad the railroads. We wonder how much railroad stock he owns.—[Ed.]

"If the subscription price of FREIGHT was \$25 a year, I should consider it most reasonable. It is worth much more than that to me."
—A Subscriber.

NATURAL FORCES OR POLITICAL FIAT; WHICH SHALL CONTROL OUR COMMERCE?

BY DAVID WILLCOX.

(An address delivered at Cornell University.)

The Question at Issue.

WHEN the distinguished Chairman of the Interstate Commerce Commission recently addressed this University he said, regarding the agitation for power, to further "regulate" the railroads which the Commission has fostered for so many years, "the aim is to secure charges for railway transportation which shall be reasonable in themselves and free from discrimination as between different persons or different localities."¹ But reasonable and equitable charges are both prescribed by the existing law and the constant aim of the carriers. There is no difference anywhere as to the principles which should and do control.

Can reasonable and equitable charges be most certainly secured by operation of natural commercial forces, controlled by the courts which administer justice according to well settled principles? Or will it be safer to rely upon the wisdom of a political body which, as will be seen hereafter, possesses no definite rules of rate making; seeks to be substantially independent of the courts, and has no responsibility for the methods or results of operation?

That is the actual question which is now pending for decision.

Congress Never Intended to Give the Commission Power to Fix Future Rates.

The Interstate Commerce Law was passed in 1887. No one then supposed that the statute gave power to the Commission to fix future rates.

This appears from the debates in Congress at the time. It was stated explicitly last April (1905), before the Senate Committee on Interstate Commerce by Senator Cullom, who was Chairman of the Senate Committee in 1887, when the act was passed. In the course of a colloquy among the members, Senator Foraker said: "Then, as I understand it, you agree * * * that it was not intended to confer the rate making power?" In reply Senator Cullom said: "There is nothing in the law that *justifies* the conduct of the Commission in making rates, to take effect in future, and *nobody ever pretended there was any such thing*; but they had power to determine whether a rate now existing is reasonable or unreasonable."

So, too, the Commission, immediately upon its organization, decided, in an opinion by Judge Cooley, its most distinguished member, that a construction of the statute which would require the Commission to act as rate makers for the entire country was inadmissible, "because, in a country so large as ours and with so

vast a mileage, it (the task) would be superhuman" (1 I. C. R. 280). Moreover, in its early days the Commission defined its power exactly by saying that "no tribunal is empowered to judge for it until the carrier has acted, and then *only* for the purpose of determining whether its action constitutes a violation of law (Id., 281)—the Commission's power in respect to rates is to determine whether *those which the roads impose* are for any reason in conflict with the statute" (Id., 357).

The courts held as early as 1889, and constantly thereafter, that the Commission had no power to make future rates.

But animated by the desire to magnify the office which is so characteristic of human nature, the Commission shortly assumed to fix absolute future rates. That action was at once resisted as beyond its authority. The Circuit Court, through the eminent Judge Howell E. Jackson, decided in 1889 (37 Fed. 567), and again in 1890 (43 Fed. 37), that the Commission possessed no such power. The court said in the latter case: "Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage to persons or traffic similarly circumstanced, the Act to Regulate Commerce *leaves common carriers as they were at the common law*, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits."²

These decisions were affirmed by the Supreme Court in 1892. The Commission, nevertheless, made them the subject of bitter criticism in its annual reports, and, in the face of constant defeat in the courts, struggled on with its attempt to exercise this vast authority. The Supreme Court, in 1896, and again in 1897, held that the Commission's action in this behalf was utterly unauthorized—a colossal error—and adopted as a correct statement of the law the ruling of Judge Jackson above stated, which was made in 1890.

Thereupon the Commission set on foot an agitation for practically unlimited power which it has since constantly promoted. The Commission has always had full power to enforce through the courts what Judge

¹ It may be remarked in passing that this statement of the rule of law was somewhat inaccurate. Not all discriminations are prohibited by statute, but only such as are "unjust" or "undue" (145 U. S., 254; 162 U. S., 218, 220).

² It was somewhat startling to find Mr. Knapp saying that the books can be searched in vain for actions at law to recover excessive rates. In point of fact there are several such cases in the jurisprudence of the State of New York, and various other instances are cited in the opinions in those cases.

Jackson termed these two leading prohibitions—that rates shall not be unreasonable and shall not give unjust discrimination or undue preference. The courts by injoining unreasonable or discriminating rates have always had the power to prevent their exaction in the future.³

But the Commission's burning aspiration has been to absorb not merely the administrative function of investigating existing rates, but the judicial function of adjudging as to those rates, and the legislative function of fixing substituted rates for the future. It would fain combine in itself the powers distributed by the Constitution among the government's "three grand departments." (103 U. S. 190.)

The record shows that there have been substantially no meritorious complaints as to rates, and there has been no genuine demand for enlargement of the Commission's powers.

What necessity has been shown, either by the Commission or in the President's messages, for intrusting to this political body such autocratic power; what proof has been made of the existence of such crying evils as are alleged with so much fertility of iteration? The facts appear in the record of the Commission since its creation. That shows how many, or rather how few, cases have been established coming within the prohibitions of the Interstate Commerce Law.

The total number of freight transactions since 1887 has been approximately 3,000,000,000; the number of informal complaints disposed of by the Commission has been 8,000; the number of formal complaints has been 770, of which 370 have never come to a hearing; the number of formal complaints which have come before the courts has been 45, and the total number of cases in which the Commission was sustained by the courts has been *one and one-half*.⁴ *There has never been a case of unreasonable rates established in the courts and but one and one-half cases of discrimination or preference.*

This shows how erroneous is the statement of the President's message that "the history of the cases litigated under the present commerce act shows that its efficacy has been to a great degree destroyed by the weapon of delay, almost the most formidable weapon in the hands of those whose purpose it is to violate the law." As just shown, the record shows that all the cases litigated, *with the exception of one and one-half*, have ended in the defeat of the Commission, so that whatever delay has existed has served the ends of justice. Justice would clearly have been defeated by an "immediate inforcement" of the Commission's orders.⁵

The clamor of the Commission has, therefore, been for enlarged power to make decisions which are almost invariably erroneous. Until the President's annual

message of 1904 this agitation had no substantial popular support. This is shown by the fact that in the campaign of 1904 there was no mention of the subject of political rate fixing in either platform, by either candidate or by any prominent campaign speaker. No one deemed it a pending issue. One year ago nobody thought of it seriously except the Commission.

Surely this shows how little political rate fixing is necessary, and how little it is demanded by genuine public sentiment.

Power Sought Is Authority to Control All Rates.

What is the extent of the power now sought? In its annual report for 1904 (p. 8), the Commission says that it is the same as that which it assumed to exercise until the courts held that it was acting without authority. The precise effect of this has been stated by the Supreme Court as follows (167 U. S. 510): "There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. * * * *So that, if the power existed as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission, of its own motion, to suggest that all the interstate rates on all the roads of the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching to every road and covering every rate.*" If the proposed legislation be enacted, the Commission itself, or any person whomsoever, whether interested or not (194 U. S. 25), can, therefore, institute a proceeding which will include an unlimited number of carriers and attack innumerable rates.

There have already been several cases in which the Commission has acted in precisely that way. The Import Rate case, decided in 1894 (2 I. C. R. 658; 3 Id. 417), involved the rates upon all shipments from abroad to interior points, and the Supreme Court said that the orders therein, instead of being regulations calculated to promote commerce and enforce the express provisions of the act, are themselves laws of wide import, destroying some branches of commerce that have long existed, and undertaking to change laws and customs of transportation in the promotion of what is supposed to be public policy." (162 U. S. 234.) The Maximum Rate case (4 I. C. R. 592, 617), decided in 1894, involved in one proceeding practically all rates on south bound business east of the Mississippi River. The Business Men's League case (9 I. C. R. 318), decided in 1902, involved substantially all rates from the Mississippi to the Pacific Ocean.

³ Mr. Knapp's excuse for this record was original, to say the least. He said that the Commission had been so constantly overruled because "the Commission found certain facts of injustice and discrimination which they thought this law was intended to prevent and correct, and so they said; these things are not only wrong, but they are unlawful, they violate the act. The courts said in substance these things may be wrong, but they are not unlawful, they do not violate the act; and that is the reason why the courts have not enforced the orders of the Commission."

The statement that "the courts said, in substance, these things may be wrong," seems to be evolved from the consciousness of the learned Commissioner. It certainly does not appear in the reports. But aside from this, the suggestion is that in ninety-three per cent. of the cases, the Commission held against action which was perfectly lawful, because the moral sense of the Commission did not agree with that of Congress! Was ever such an excuse made in behalf of a body charged with administering the law—not with making it?

⁴ Mr. Knapp's statement that the present control of the railroads "is purely personal and private and unrestricted by law" was, therefore, quite misleading and may be dismissed as Pickwickian.

⁵ The record of the English Railway and Canal Commission affords a striking contrast. That body does not attempt to deal with future rates, nor to pass upon cases which it has prepared itself. Out of 38 appeals from its decisions, 34 have been sustained and 4 overruled. (*The Quarterly Journal of Economics*, November, 1905.)

Indeed, general rate fixing would be the Commission's principal future activity. *It does not look forward to the method of "here a little and there a little"—in the words of the prophet Isaiah; it contemplates doing business by wholesale. In its annual report for 1893 (p. 13), the Commission said "every case before the Commission, however trivial it may appear, involves in its disposition the formulation of principles under the law which have important bearing upon the business and the commerce, not only of the immediate locality, but often of the entire country."* In its annual report for 1897 (p. 35), the Commission said: "The great bulk of our orders * * * must pertain to the future. These will be *orders fixing either a maximum or a minimum rate.*" In its annual report for 1904 the Commission said (p. 29): "It is probably near the truth to say that the cases now pending before the Commission *directly or indirectly affect* almost every locality, and therefore, nearly all the people of the United States."

This action by the Commission is the precise object of the political rate fixers. In his testimony before the Senate Committee Mr. Bacon, the leader of the propaganda, said: "There are three cases within the past year in which large sections of the country are interested—an immense population—one of which covers a large part of the Pacific Coast; another covering the southeastern section of the country with reference to lumber, and the third covering the whole country with reference to hay. * * * *The rates from the different districts are so interlaced with one another that they must be considered as a whole.*" Mr. Prouty, the leading member of the Commission in rate fixing activities, said before the Senate Committee that the Commission has *not a case pending which does not involve a future rate, and that many single cases involve one thousand rates.*

How inapplicable, then, was the statement of the President's message of 1904, that "at present it would be undesirable, if it were not impracticable finally, to clothe the Commission with general authority to fix railway rates"; and the further statement of the message of 1905, that "my proposal is not to give the Commission power to initiate or originate rates generally, but to regulate a rate already fixed or originated by the roads, upon complaint and after investigation!"^{*} The Supreme Court has already *held* that the action now sought would give the Commission *complete* control over *all* rates in proceedings which it would be empowered to originate itself, and the Commission has shown its eagerness to exercise such control. It is, therefore, idle to suggest that the action which the President urges will not have that effect.

^{*} Equally illusory was Mr. Knapp's statement that, "there is no proposal to have a Commission make rates. Let the railroads go on and make their own rates. It is simply proposed that if you complain that you are charged too much or that your town is at a disadvantage, that there shall be a tribunal to which you can go, and that tribunal shall have authority to settle the controversy, and if it is settled against the railroad that the railroad shall submit to that authority. I do not understand why there should be so much opposition to such a measure."

The difficulty with this ingenuous statement of the power sought is that the Supreme Court has settled that the action proposed would have the effect of giving to the Commission power to fix *all* rates. The learned Commissioner apparently fails to understand the Supreme Court.

So, too, the bill just prepared by the Interstate Commerce Commission shows the foolishness of asserting that the effort is for anything save unlimited power. It gives the Commission power to establish all classifications, all differentials between localities, all rates, maximum, minimum and absolute, all through routes and rates and divisions of such rates among the carriers. Save as forbidden by the Constitution, this proposed bill secures to the Commission substantially all executive, judicial and legislative power which could be exercised in the premises. The President and Mr. Taft and Mr. Knox speak of empowering the Commission to fix a "maximum reasonable rate." But the Commission has no intention of being limited to fixing *maximum* rates by retail; its bill authorizes it to fix by wholesale every factor upon which the income of the railroads depends. Its annual report for 1905, which has just been issued, also argues that the Commission should be given practically unlimited power over the whole subject.

In view of all these facts it seems somewhat fatuous for the rate fixers to go on asserting that they do not intend the necessary consequence of what they are seeking.

Great Volume of the Power Sought.

The volume of the power which the Commission has so long sought to grasp is almost inconceivable.

The mileage of the roads is 213,904, and the employes number 1,296,121, or 611 to each 100 miles of road, and were paid last year \$817,598,810; the gross earnings of the roads last year were \$1,975,174,091, the operating expenses \$1,338,896,253, and the capitalization \$13,213,124,679; there are annually filed over 130,000 tariffs, representing probably at least 1,000,000 rates, and it is computed that there are each year 320,000,000 separate freight transactions; the internal commerce of the country during last year was about \$25,000,000,000 in value.

In exercising the power sought, the Commission would be practically uncontrolled by the courts.

The proposed legislation would place these vast interests under the control of the Commission, and the Attorney General has ruled that the Commission would be independent of the courts so long as the rates which it fixed did not amount to demonstrable confiscation. So, too, the Chairman of the Commission, in his recent address before this University, said: "Between the rate which the courts would not condemn as unreasonably high, and the rate imposed by public authority which the courts would not restrain as unreasonably low, there is a considerable, and in many cases a very considerable margin which measures the range of legislative discretion."

That range covers practically all commercial questions involved. If rates be extortionate, the judicial power can relieve the shipper; if they be confiscatory, that power can relieve the carrier. But between these two limits established by law is the range of commercial discretion. Wisdom in its exercise means success;

improvidence means failure. Over the exercise of that discretion the Commission clamors for supreme power, utterly unhampered by judicial or other control.' Within that range the Commission would be omnipotent, because, as Mr. Knapp says, it would be "exercising legislative discretion" which the courts cannot review.

Under the Commission's plan, therefore, the courts would be powerless to protect railway property from the insidious process of destruction by successive steps in reduction of its income, here a little and there a little, no one of which steps taken separately would perhaps be demonstrable confiscation, but which steps taken together would accomplish that result. It seems appropriate to quote the expression of the Commission that "it is both human nature and the lesson of history that unlimited power induces misuse of that power."

The Commission Has no Principles of Rate Fixing.

The Government is not an abstraction. It consists practically in the persons who hold the offices. As regards the present question, it is the Interstate Commerce Commission, composed of four eminent lawyers, without experience in railroad matters. The inability of the Commission to discharge such functions as it seeks and its lack of any principles on the subject of rate fixing are shown not merely by the frequency with which the Commission has been overruled, but appear also in its annual reports. A few of its utterances will be cited to show the state of mind of the Commission upon the general subject.

The following "nice derangement of epitaphs" first appeared thirteen years ago, and ever since has gone on re-echoing down the empty corridors of time. "To give each community the *rightful* benefits of location, to keep different commodities on an *equal* footing, so that each shall circulate *freely* and in *natural* volume, and to *prescribe schedule rates*" (not here a little and there a little) "which shall be reasonable, just to both shipper and carrier, is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation." (Annual Report for 1893, p. 100.) "No one who understands the intricacies of transportation would care to assert that the determination of a just rate, or the decision as to what constitutes discrimination, is an easy task. To *some extent* the principles upon which

taxation rests must be allowed in fixing a just rate; to *some extent* the result of the rate upon the development of industries must be taken into the account in all decisions which the Commission is called upon to make; to *some extent* every question of transportation involves moral and social considerations, so that a just rate cannot be determined independently of the *theory* of social progress." (Annual Report for 1895, p. 59.) "Within *certain* limits, it is good policy for the railway manager to increase his tonnage, even at the expense of reducing the rate per ton. *Just how far this rule applies no one can tell.* The merchant who buys an article for a definite price knows when he sells it whether he makes or loses by the transaction; and the manufacturer, as a rule, has a pretty accurate idea of the cost of production, *but the railroad operator cannot ordinarily say whether he should or should not, as a matter of policy, take traffic at a certain price.*" (Id., p. 17.) "The freight rate is a complex problem when applied to almost all competitive traffic. *Very few people not acquainted with the subject have any idea how difficult the solution of that problem is.*" (Annual Report for 1898, p. 15.) "It is often difficult to say what constitutes a reasonable rate, and more difficult to give in detail the reasons that lead to the conclusion reached; although the Supreme Court of the United States has given certain rules by which to test the reasonableness of transportation charges, and although the Commission has endeavored to apply those rules, yet whenever it has interrogated railway officials as to whether or not they are governed by them when making rates of transportation, they have invariably answered in the negative, and said that to do so would be impracticable. The carriers do not apparently possess the necessary data for that purpose and *there is at present no other source from which the Commission can obtain such data.*" (Annual Report for 1903 p. 54.)

Time does not serve to fitly discuss in detail the value of these Delphic utterances. One of the most striking is that of the last extract, that the Commission solemnly interrogates the carriers whether they are taking their own property "without due process of law" (in the words of the Constitution), and is itself unable to conform to the constitutional prohibition of such action upon its part, because the carriers do not indicate what course the Commission should take in order to act within the Constitution.

Who can tell what these phrases mean? They contain not a glimmering of any sound business principles upon which should be decided these greatest commercial questions of the time. Apparently the Commission shares the profound view of the loquacious president of a minor Chicago railroad system, that rate making

¹ Mr. Knapp showed his appreciation of the extent of the power which he seeks by the following further remarks. "Along these lines I suggest will be found the reason why our railroad friends are so insistent that there shall not be a tribunal having this *legislative* authority, because they know very well that the only tribunal which can effectually deal with their rates and charges is a tribunal having *legislative* rather than *judicial* powers." That is to say, the learned Commissioner wishes power which will not be subject to the judicial review which has been fatal to ninety-three per cent. of the Commission's decisions; yet he considers it remarkable that the carriers prefer that the Commission's opportunity for error should not be enlarged.

Mr. Knapp illustrates the complete freedom from judicial control which the Commission seeks by the case of the Chicago grain rate, which, as he states, was recently raised from fifteen to seventeen and one-half cents. "It is impossible to prove in any court of record that seventeen and one-half cents is unreasonably high. I think it is out of the question to prove it. On the other hand, if public authority shall reduce that rate to fifteen cents, which is the amount the carriers accepted all summer, it would be impossible for the carriers to show that fifteen cents was unreasonably low." Questions so vital to the existence of the railways he would have entrusted to the *exclusive* power of the Commission. And, as will be seen later, the Commission has no rules by which the exercise of such power would be guided.

² In view of these expressions it was but natural that Mr. Knapp should describe the use of the property of the railroads, not as a matter of contract but of "political right," to be enjoyed apparently without regard to the interests of their owners save as they are protected by the Constitution.

The use of the carrier's services is a legal right within definite limits, but its terms are regulated by contract—express and implied. Certainly the character of the right is not changed, much less dignified, by calling it "political" rather than legal and contractual. It once more illustrates the regrettable effort to remove these rights of property from the control of jurisprudence to the realm of "politics."

is largely a matter of guesswork. The present contention is that these questions shall be submitted to the ultimate decision of a body which has no considerations of sound business policy to suggest in the premises, but is guided largely by its own views as to "moral and social considerations" and "the theory of social progress," and concedes its inability to apply the constitutional guarantees of property as expounded by the Supreme Court.

All of this calls to mind Alice in "Through the Looking Glass," when she hears the poem of "Jabberwocky." "It seems very pretty," she says, "but it's rather hard to understand; somehow it seems to fill my head with ideas, only I don't exactly know what they are." As Stephen Blackpool said at the end of life, "it is all a muddle." No wonder the President, doubtless after exhaustive perusal of the Commission's reports, somewhat plaintively says that "it is a complicated and delicate problem, and all kinds of difficulties are sure to arise in connection with any plan of solution, while no plan will bring all the benefits looked for by its more optimistic adherents."

Rates Are Now Evolved From the Necessities of Commercial Competition.

Under the present practice, however, rates are not made as a matter of guesswork. Nor does the bogey used so liberally by the political rate fixers, regarding the ability of a limited number of persons to control the rates of the country, have the slightest relation to actual conditions. While as far as possible stable rates are maintained, in accordance with the requirements of the Interstate Commerce Law, in point of fact the rates gradually and constantly yield to the stress of fierce commercial competition. They are evolved from the necessities of commerce. That is the sound basis—arbitrary action, whether by traffic officials or by Commerce Commissioners, while obstructive and injurious for the time being, in the long run, must give way to those necessities.

The animating principle of the existing system of rates is to facilitate business in every possible direction; to enable everyone to do business; to aid every producer to reach as many markets as possible. This spreads commercial competition, and so far as possible equalizes retail prices throughout the country. As the Interstate Commerce Commission has said, "perhaps in most instances the freight rate is so small a part of the total cost of a commodity that the consumer is unconscious of the increase in rates" (Annual Report for 1902, p. 32); it costs but one cent to transport a pair of shoes from New York to Chicago. Thus the producer is enabled to reach distant markets, and the consumer has the benefit of competition among the producers.

From the necessities of commerce have, indeed, arisen some features of the rate system which are the subject of frequent discussion and sometimes of acrimonious criticism. Yet examination will show that they are based on sound commercial principles.

Much has been said, for example, of the expression

"charging what the traffic will bear," as if that were peculiar to the carriers and indicated grasping methods. The full expression is, "charging what the traffic will bear *and move freely*." This means merely that rates shall be adjusted so that each class of traffic shall be subject to a rate which it can bear without interfering with free movement. Otherwise the charge will be what the traffic will *not* bear. For various reasons—such as value, expense of loading, carriage and unloading, despatch in transportation—one class of traffic can pay different rates from another. It is the general commercial principle that prices shall be fixed at the point where they will best stimulate free buying and at the same time remunerate the seller. That is the principle of charging what the business will bear and yet move freely. It is not peculiar to the railroads, but expresses merely the most fundamental rule in regard to prices generally.

Another example is the basing point method of fixing rates. If Atlanta be a basing point for the rate through from New York it will be a low rate, and the sum of that through rate and the local rates to points within reach of Atlanta will not exceed the through rates from New York to those various points. This enables Atlanta to become a distributing centre. If there were no such system there would be no margin in favor of Atlanta, and everyone would order direct from New York. But no injustice is done to the various points in the neighborhood by enabling Atlanta to sell to them rather than confining the business of distribution to New York. They are injured only in case their own through rates are unreasonable.

So, too, with the import rates regarding which Mr. Knapp had something to say, and which the President's message seems to regard as questionable. In order to enable the interior cities to become distributing points, the import rates are less than the domestic rates. If there were no such difference, the merchant in the interior would have no advantage over the merchant at the seaboard and distribution would naturally be made from there. The present is the commercial method which enables the inland merchant to live. But Mr. Knapp would shut his eyes to all conditions outside of this country, such as cost of production and ocean transportation, which must be considered and met in order to enable the traffic to move to inland points. Nothing should be regarded, Mr. Knapp says, save distance within this country; "otherwise the problem simply becomes insoluble, since there is no rule, theory or plan by which you can determine what the difference should be." There could be no better illustration of the difference between commercial and bureaucratic rate making. The bureaucrat confesses himself powerless, while the business man enables the business to move. And this is done without injustice to the local shipper unless his own rates are excessive.

The export rates are governed by somewhat similar considerations. They are fixed at amounts which enable American manufacturers to compete in foreign markets with foreign producers and thus to keep

American industries active, but if they be raised to the same figures as domestic rates it will be impossible to move the goods, because the foreign producers are in so much closer proximity to the foreign markets. To that extent the productiveness of this country would be destroyed. Do these export rates injure the domestic shipper in the least unless his own rate is excessive? Manifestly not; this condition is beneficial because it promotes activity of business and, therefore, consumptive demand generally.

Take again the long and short haul question. Mr. Knapp was somewhat expansive as to this, characterizing it as a "most offensive class of discrimination," and referring to the through rates to Spokane and Seattle, regarding which much has been said and written. Seattle has water competition and, therefore, low rates. This does not injure Spokane unless the through rates to that point are too high, because, as it has no water competition, it cannot have the benefits thereof. To use the Commission's phrase, Seattle is entitled "to the rightful benefits of location." What, then, must be the through rate to Spokane in order to enable the railroads to hold the business? Obviously the amount of the through rate to Seattle plus the rate from Seattle to Spokane. Otherwise the business will necessarily go by water to Seattle and from thence by rail to Spokane, so that the railroads will have nothing save the short haul from Seattle to Spokane. That would be no advantage to Spokane, because it would have to pay for water transportation to Seattle, instead of paying for railroad transportation. Nor does the existing system injure Spokane unless its own rate be excessive.

The necessity of discriminating rates was strikingly illustrated again by a case decided recently by the Indiana Railroad Commission on the subject of coal rates. The rates in force were 85 cents to the private consumer and 65 cents to the manufacturer who made finished products shipped by rail. The Commission sustained the discrimination. The manufacturer produced profitable freight which reimbursed the railroad for carrying coal below cost, while in the case of the private consumer profit must be made on the cost of carrying the coal, if at all; this discrimination was vital to enable the manufacturing industries to compete with other producers and thus preserve the localities involved from extinction. These were the grounds of the decision.*

Rates by fiat would be rigid and upon a mileage basis; they would cripple production and destroy local prosperity.

* Mr. Knapp, after speaking of the insurance companies, said, "is it possible? I trust not, I cannot believe it, that if we would unearth the secret of railway operations, we should find the same rottenness and the same graft." This illustrates the recklessness of much current discussion. Without suggesting a scintilla of proof, the learned Commissioner thought it fitting to make this insinuation against the entire railway service.

That service will compare favorably with any branch of employment in the country. From the highest to the lowest in station, it is unsurpassed for integrity, industry and fidelity to duty. The railway service should not be subjected to such imputations from a member of the Commission which is supposed to have the true interest of the railways at heart, however acrimoniously its opinions may be sometimes expressed.

Especially is this unbecoming in view of the fact that the office of the Interstate Commerce Commission itself has been officially investigated within the past three years, and the report of that investigation has never been made public but has remained curiously inaccessible.

But if rates be made by the Government, some rigid rule must be pursued, as the Government could thus only avoid the charge of favoring one locality at the expense of another. The only rule of absolute uniformity which has ever been suggested or discovered is to make rates upon a mileage basis. This has been the result of governmental rate fixing, both in other countries and also in the States of this country where it has been effectively practiced.

The effect of this method was stated by Mr. Bacon to the Senate Committee as follows: "If the Government undertakes to establish the rates primarily it must reach to a large extent the mileage basis of establishing these rates, and in my judgment nothing would be more detrimental to the commercial interests of the country than the establishment of such a basis." The incessant cry would be that "every locality that has natural advantages is entitled to the benefit of those advantages." As has been well said, the task of Sisyphus would be a pleasant and cheerful pastime compared with the Commission's efforts to satisfy these claims.

Inevitably each producing locality would be shut up within its own little market, and as soon as it reached the point where the distance tariff applied in favor of the producer at another point it could go no further, because the rates would draw a dead line beyond which commerce could not pass. Both Eastern and Western markets would be insufficient, and the farmers, manufacturers and merchants would be shut out from the more distant markets in which their produce and their goods are now exchanged for each other. The effort to prevent natural differences by statute would thus lead to contraction of practicable markets and destruction of commercial competition. The result would be, in general, decrease in production and increase in prices.

In case the Commission's rates should go into effect without judicial review, it is obvious that they would still further cripple and destroy local interests. In 93 per cent. of the cases the Commission's orders have been erroneous. For such errors the carriers would be without remedy because they could not collect from the shippers, whose goods had been carried at rates unduly low. But still more than this, every case of discrimination between localities which is decided in favor of one locality is decided against another. The latter locality would suffer irreparable injury from the action of the Commission, and might well be destroyed by a decision based upon a "theory of social progress" which would not stand judicial scrutiny. Such destruction would be effected by immediate enforcement of the Commission's order. When the courts reversed that order, the locality affected would probably be beyond resurrection.

Clearly, therefore, it is infinitely safer that rates should be settled by the action of natural forces rather than by a political body which acknowledges its inability to observe the constitutional guarantees of property; has no definite principles of rate making or responsibility for results of operation; seeks to be inde-

pendent of judicial control, and would be occupied chiefly in satisfying excited claimants.

The action urged would be merely a step in the direction of Federal control of all commerce.

Political rate fixing would be merely a step toward universal political direction of interstate commerce, and apparently of all the activities of life to cover which the commerce clause of the Constitution could be stretched. As Mr. Knapp put it, "this question goes beyond the mere question of railway rates, and reaches the larger question of capitalistic control." Congress is not given by the Constitution any express authority over the carriers. They are not in general incorporated by the National Government and receive no franchises from it.

It is, therefore, erroneous to suppose that there is any special power arising by reason of any grant from that Government. The entire power of Congress arises from the provision of the Constitution that it shall have power to regulate commerce with foreign nations and among the several States (Art. I., sec. 8, subd. 3). But the shipper of goods is engaged in interstate commerce even more than the carrier of the goods shipped. The shipper and his business are, therefore, quite as much within the power of Congress as the carrier and his business.

The Commissioner of Corporations has been urging for some time that engaging in interstate commerce as a means of livelihood shall no longer be a right, but a *privilege* to be enjoyed only by those possessing a *license* on such terms as the Government shall see fit to prescribe; the citizen shall be permitted to make his living only upon such conditions as the Government may fix. The Commissioner, in his report just issued, returns with renewed vigor to the task of overruling the Supreme Court. He urges that liberty to engage in interstate commerce shall exist hereafter only upon terms "affirmatively" fixed by Congress, or, better still, by an administrative bureau. The Secretary of Commerce and Labor eagerly joins in this campaign for further power.

In his recent speech at Atlanta the President said that, in his judgment, "all corporations doing an interstate business (and this means the great majority of the largest corporations) should be held *accountable to the National Government, because their accountability should be co-extensive with their field of action.*" In his recent message the President urges that

¹⁰ The expressions of the message upon the subject were as follows: "In order to insure a healthy social and industrial life every big corporation should be held *responsible by and accountable* to some *sovereign* strong enough to *control* its conduct."

"Experience has shown conclusively that it is useless to try to get any adequate regulation and supervision of these great corporations by State action. Such regulation and supervision can only be effectively exercised by a *sovereign* whose jurisdiction is coextensive with the field of work of the corporations—that is, by the National Government. "There at present exists a very unfortunate condition of things, under which these great corporations doing an industrial business occupy the position of *subjects* without a *sovereign*, neither any State government nor the National Government having effective control over them. Our steady aim should be . . . to assert the *sovereignty* of the National Government by *affirmative* action."

"It has been a misfortune that the national laws on this subject have hitherto been of a *negative* or *prohibitive* rather than an affirmative kind."

"Until the National Government obtains in some manner, which the wisdom of Congress may suggest, proper *control* over the big corporations engaged in interstate commerce—that is, over the majority of the great corporations—it will be impossible to deal adequately with these evils."

all corporations engaged in interstate commerce shall be subjected in all respects to regulation and supervision by the "sovereign" (which is explained as meaning the National Government) by "affirmative" rather than merely "negative and prohibitive" statutes." As a leading journal says: "Under this policy the rights and powers of the States would shrink into insignificance under the grasp of a potent bureaucracy at the national capital."

But, as already pointed out, whatever power the National Government possesses is not over corporations especially, but over interstate commerce, so that this doctrine of "accountability" and "control" applies as much to all individuals engaged in interstate commerce as to corporations so engaged. The proposed legislation would, therefore, be in the direction of general socialism, which would affect manufacturers, shippers and carriers alike, and would subject to political control the question what the citizens of the country shall be allowed to earn by the use of their constitutional rights of liberty and property. In a recent editorial the New York *World* aptly styled this "Prussianizing the Republic."¹¹

Under political rate fixing the railroads would no longer be controlled by the vigorous policy of private enterprise, but by the rigid governmental methods which in other countries have kept up the rates and kept down the service. They are the methods which so often make governmental operations a stumbling block and foolishness. The Commission concedes this danger by providing in its proposed bill that its rates shall remain in force only one year. But then the mischief would be done—when the rates were once unjustly fixed commerce would fly beyond recall.

Like Frankenstein in the story, the country would be at the mercy of the monster which it had created. Before long the political platform of one party would demand "a square deal" for the ports of the Atlantic seaboard, and that of the other for those of the Gulf. Over all the din of partisan politics would be heard what Daniel Webster called "the shrieks of locality." Every statesman in the land would be busily occupied with "regulating," in the interest of his immediate constituency, both carriers and shippers engaged in interstate commerce. The merchant and the investors would be the helpless sport of every unreasoning clamor and the shining mark of every demagogue.

The Only Effective Remedy Is Prompt Resort by the Commission to the Courts.

The substantive provisions of the Interstate Commerce Act are that rates shall be reasonable, and there shall not be undue or unjust discrimination or preference. It is not proposed to add anything to these provisions. The carriers are constantly striving to conform to them. For eighteen years the Commerce Commission has had full power to enforce these provisions in the courts. Yet *no case of unreasonable rates* has

¹¹ As this article strongly expresses the situation a reprint thereof is attached hereto, together with an extract to the same effect from an editorial of the New York *Herald*.

ever been established in the courts, and the Commission has succeeded in proving *one and one-half cases of discrimination* in all that time. The carriers earnestly desire that anyone who is aggrieved shall have an effective remedy. But the record makes it clear that nothing can be accomplished by proceedings before the Commission which, under the Constitution, can never have judicial character. (154 U. S. 479, 485, 489).

The lawmaking power ordinarily prescribes rules of conduct for the citizen and leaves him to carry on his affairs in accordance therewith. The effort here is not merely to prescribe such rules of conduct, but to seize future control of the property which they affect by "affirmative" statutes. Past experience shows how futile must be any such attempt.

The true course is for the Commission to cease making orders which, as it says, "bind nobody and go for nothing," and which the Supreme Court has said can never have judicial force. When the Commission deems a case meritorious, it is fully empowered, under the Elkins Law of 1903, to resort to the courts for relief. That course will save all dilatory and vexatious preliminaries, and will enable the courts to decide at once whether the case has any more merit than the 93 per cent. of the Commission's decisions which have been overruled.

Short cuts seldom prevail against written constitutions, and as the historian Lecky observes, the great reforms of history have been effected, not by passing statutes, but by repealing them. Under the Anglo-Saxon system, and if possible even more especially under the Constitution of the United States, the courts alone are empowered to administer justice and determine rights of person and property. To their protection every class of citizen is entitled—even those engaged in interstate commerce; "big" corporation and single individual alike.

Every effort to dispose of these fundamental rights by political fiat will, therefore, be unavailing—a passing delusion. The enforcement of these statutory provisions of the interstate commerce law can be had only through the courts. As soon as that is recognized the question of rates will pass out of politics, where things go by favor, and finally into the domain of jurisprudence, where all claim, and in the long run receive, equal and exact justice.

The "square deal" can never be maintained by political fiat, but only by the operation of natural forces, limited by settled principles of law administered by the country's enlightened and high minded judiciary. That branch of the Government—not the "administrative boards"—is the bulwark upon which all constitutional rights of liberty and property depend. *It* never conducts campaigns in Congress and upon the stump for vast additions to its power. But its authority must be preserved and strengthened rather than cut down, if free government is to endure.

JUDGE PHILLIPS' REBATE DECISION.

Lack of Jurisdiction by Reason of the Want of a Substantive Statute.

The decision of Judge Phillips, sitting in the Circuit Court at Kansas City, by which the injunctions granted in March, 1902, against rebates were raised is destined to be one of the most important decisions, involving the right of a court to issue injunctions in the matter of transportation. The real cause for dissolving the injunction was the lack of jurisdiction in the court by reason of the want of a substantive statute.

The history of this case is that in March, 1902, a temporary injunction was granted by the United States Circuit Court for the Western District of Missouri upon application of the Attorney-General filed in the name of the United States against the Atchison, Topeka & Santa Fé Railway Company. Injunctions against other carriers were issued upon like grounds at the same time. The basis for these actions was found in the record of investigations made by the Commission and subsequently reported to the Attorney-General, which indicated the giving of rebates by the carriers upon dressed meat, packing house products, and grain and grain products.

The injunctions issued restrained the carriers from continuing to depart from their published rates on such commodities or upon other interstate traffic carried over their lines. On February 19, 1903, the Elkins Law was passed by Congress, and in this act application for injunctions upon request of the Commission was expressly authorized. Soon after the passage of this act the United States Supreme Court decided the case of United States vs. Missouri Pacific (189 U. S. 274), holding that an injunction issued before the Elkins Act by the Circuit Court in that case, upon application of the United States, alleging violation of the Act to Regulate Commerce, was not authorized, but that since the enactment of the Elkins Law it was authorized, and remanding the case to the Circuit Court for further proceedings.

On January 19, 1904, the Commission concluded an investigation in what is known as the Hutchinson salt case, wherein it was shown that the Atchison, Topeka & Santa Fé Railway Company and other carriers had, through a division of rates with a so called terminal railroad, granted concessions in rates which inured to the benefit of the Hutchinson (Kan.) Salt Company; and on February 1, 1905, the Commission concluded another investigation, in which it appeared that the same carrier had granted rebates to the Colorado Fuel & Iron Company on coal originating in Colorado. The evidence and reports of the Commission in those cases were reported to the Attorney-General. Thereupon during the present year informations charging the Atchison, Topeka & Santa Fé Railway Company with violation of the injunction or restraining order issued by the court in 1902 were filed under direction of the Attorney-General.

Transcontinental Rates and Water Competition.

BY W. A. MEARS.

Secretary North Pacific Coast Jobbers and Manufacturers' Association.

EDITOR'S NOTE.—Accompanying Mr. Mears' article was a letter from him to the Editor explaining why he was moved to submit the contribution. He said: "The President has been told by visiting delegations of the serious discriminations practiced against Spokane by the railroads. The case has been harped on by witnesses before the Senate Committee on Interstate Commerce. Various papers have commented upon it until the American people have probably concluded that it is a flagrant case of railroad rapacity. This is not the case, and the minds of the people should be disabused. The cause of the apparent discrimination is the difference in geographical situation between Spokane and the cities on the Coast. The inclosed article thoroughly explains this matter, which the citizens of this section of the United States would feel under many obligations to you for publishing. You will note that I am secretary of this association, which is composed of all the jobbers and manufacturers of Portland, Seattle and Tacoma and formed for the purpose of attending to freight matters, and consequently I could not, in any manner, be accused of being a railroad apologist. More than this, the citizens of this part of the country are entirely in accord with the President regarding the necessity (although not certain in what manner) of regulating railroads. My article is not directed against Spokane, but is simply a delineation of the situation, with the logical result flowing therefrom."

My attention has been called to an article by Mr. Ray Stannard Baker in *McClure's Magazine* for November, in which he speaks of the serious discrimination made by the railroads against Spokane in the westbound transcontinental freight rates. This same alleged discrimination was portrayed to President Roosevelt by a delegation from Spokane. The Senate Committee on Interstate Commerce also heard this complaint. Various papers and periodicals have dilated upon it, until the American people must now have almost become persuaded that a serious wrong was being practiced on Spokane by the railroads. I am induced to try and disabuse the minds of the people on this question. I propose to show that no such discrimination exists; that the present system of making rates to Spokane from the East is forced on the railroads by water competition at Pacific Coast terminal points, and is not an arbitrary discrimination; that the higher rate to Spokane is caused by geographical situation; that no matter what is done by the Government, looking toward the regulation of railroads, it will be impossible to force the railroads to make a tariff based upon mileage distances that will alter the present situation as far as rates to Pacific Coast terminals are concerned.

It must not be understood that I am an apologist for the railroads. My position as an executive officer in an association formed by the jobbers and manufacturers of Portland, Ore., and Seattle and Tacoma, Wash., for the purpose of attending to freight matters with the railroads, indicates this, and also indicates that I should be familiar with freight tariffs and with all matters concerning freight regulation that affect the shipper.

A discrimination *against* Spokane means a discrimination *in favor of* some other town or locality. In this case it would mean a discrimination in favor of Pacific Coast terminal cities—Portland, Seattle and Tacoma. The railroad rates at these points are entirely governed by water competition. The railroads are powerless to prevent this. No legislation can be passed governing ocean freights. The sea traffic cannot be controlled. It is open to competition by all the

world. The traffic up and down the Mississippi River or any other large stream is nearly all carried by rail, but the rates are very low and are kept so by water competition and nothing else. *Water governs the rate.*

Transcontinental Tariffs and Water Rates.

Suppose Spokane, which is about 400 miles east of either Portland, Seattle or Tacoma, had grown to good size (as other interior cities have) before any railroad from the East had been built to that point. What would the freight rate to Spokane be from the Atlantic Coast cities? It would be the rate around the Horn, or across the Isthmus to either Portland, Seattle or Tacoma, or the coast, plus the local freight back to Spokane, and it would make no difference whether that freight back from the coast was carried on the backs of Indians, by mule pack train, by ox team, or by rail.

Suppose again that the United States Government should constitute a commission, bureau or court, with power to make rates by rail, and that commission, bureau or court made a ruling that rates across the continent should be placed on a mileage basis: What would then occur? Taking the present rates on the Northern Pacific Railroad from St. Paul to Tacoma, we find the fifth class rates (under which a larger proportion of goods, in carloads, are classified than in any other) to be as follows: To a point

100 miles west of St. Paul it is 16 cents per 100 lbs., or \$3.20 per ton.

1,000 miles west of St. Paul it is 119 cents per 100 lbs., or \$23.80 per ton.

1,143 miles west of St. Paul it is 150 cents per 100 lbs., or \$30 per ton.

The rate of \$1.50 per 100 lbs. is the same from St. Paul to any point west of the 1,443-mile point (Sand Point, Idaho, sixty-eight miles east of Spokane) as far as Orting, Wash., fourteen miles east of the Pacific Coast terminal, Tacoma. But this rate is not used when it exceeds the rate to Pacific Coast terminals plus the local rate back. Most of the articles grading as fifth class under the class rates are put into commodity tariffs at Pacific Coast terminals, and take from 60 to 95 cent rates. Should a commodity take a

rate of 85 cents to the terminals, for instance, the local back on fifth class freight, beginning at a point 267 miles east of Tacoma and extending to Cœur d'Alene, Idaho (including Spokane), is 65 cents—the sum of these two rates is \$1.50—hence this \$1.50 fifth class rate from St. Paul is only applied as far as a point 129 miles west of Spokane (267 miles east of Tacoma), and from that point to Tacoma the rate gradually grows less (although freight is hauled further), because the local rate back from the coast grows less as the distance diminishes.

Would Be Forced to Raise Rate.

Under a ruling by the commission, bureau or court, such as indicated, the railroads would be forced to raise their rate beyond the 1,443-mile point in proportionately the same amount as now applies to the points east of that point. The average advance per 100 miles, up to the 1,443-mile point, is now 9 cents per 100 miles. This would make the fifth class rate to points west of the 1,443-mile point as follows:

1,600 miles, 159 cents.

1,700 miles, 168 cents.

1,800 miles, 177 cents.

(Tacoma) 1,907 miles, 186 cents, or \$37.20 per ton.

If a shipment originated in New York City: The fifth class rate from New York to St. Paul is 46 cents, which would make the rate from New York to Orting, Wash. (fourteen miles east of Tacoma), \$2.32 per 100 lbs., or \$46.40 per ton. The same class of freight can be landed at Tacoma from New York by ocean at from 50 to 85 cents per 100 lbs., or from \$10 to \$17 per ton, or a difference of \$1.47 per 100 lbs. on goods taking the 85-cent rate. The rate on fifth class freight from Tacoma to Spokane is 65 cents, hence it would save the Spokane shipper 82 cents per 100 lbs. (on the same goods) to ship his goods by water to Tacoma and by rail back to Spokane.

I have made these two illustrations sufficiently plain, I think, to show anyone why the railroads made rates to Spokane equal the sum of the rate across the continent to the Pacific Coast terminals, plus the local rate back. I wish to add, however, that Spokane has commodity rates on many articles as low as the Pacific Coast terminal rates, and in a good many instances, lower. The theory of the commodity rate tariff to Spokane is that she shall have terminal rates or less, on all goods that cannot be transported in good condition around the Horn. This is the theory, I say, but even this is not adhered to, and Spokane today gets terminal rates on many articles that can be and are shipped by ocean. The service now offered by the American-Hawaiian line, sailing monthly (sometimes oftener) from New York to North Pacific Coast terminals, is good. The improved manner of loading and stowing goods, keeping temperature in hold reasonably equable, and because time taken in the trip has been so reduced, makes it possible practically to ship any article by ocean, except fruits, vegetables, packing

house products, and, generally speaking, perishable goods. Several carloads of pianos have come around the Horn in good condition; the highest grade buggies and carriages are being shipped, and, with the exceptions noted, as I have said, anything can be so transported.

Shipping Glucose by Water.

Several years ago Spokane showed the railroads that glucose could not be shipped by water, because the seams of the barrels would open, and furthermore, taking it through the tropics twice would cause it to sour; so the railroads granted Spokane's request and reduced their rate to 65 cents—the terminal rate. Time passed on, and the ocean service being improved, as stated, a New York glucose refinery determined to risk a shipment by water. It came through all right (probably at a less rate than the railroad rate of 65 cents), and finally, practically all the glucose came to the Pacific Coast by water. The railroads this year saw that Spokane's contention, that glucose could not be shipped by ocean, although right in theory, was wrong in practice, and raised the rate to 97½ cents per 100 lbs., viz., the terminal rate, 65 cents, plus the local rate back, 32½ cents per 100 lbs.—since raised 10 cents per 100 lbs. at both points, Spokane and Pacific Coast terminals—although the ocean rate is 65 cents.

Please bear in mind that railroads do not give Pacific Coast terminals as low rates as steamship companies offer. For instance, the following is a comparison of a few rates from New York to this coast by rail and by water:

	Water.	Rail.
Glucose	65 cents per 100 lbs.	75 cents per 100 lbs.
White Lead.....	65 " " " "	80 " " " "
Paints	65 " " " "	90 " " " "
Canned Goods.....	60 " " " "	95 " " " "
Soap	50 " " " "	75 " " " "

It will be noticed that these railroad rates are quite a little higher than water rates, but not high enough to drive very much of the traffic to the sea. Quickness of dispatch, insurance of goods in transit, less liability of breakage and chafage, are in favor of the rail route. But one can readily see, if the railroads were ordered to place their tariffs on a mileage basis, and the same relative advance per 100 miles were made on their present tariffs, that none of the above goods would move by rail on a \$2.32 per 100 pounds tariff.

Some assert that were any commission, bureau or court given the power to establish rail rates, among the first of their rulings would be to order a mileage distance tariff. It is acknowledged that railroads are not generally being complained of on account of high rates *per se*, but many of the complaints are like Spokane's—of discrimination between competing trade centres. Such being the case, it is argued, the first solution to strike such a tribunal would be an equal rate from every point based on mileage, letting those suffer who were furthest from market.

Rates Governed by Water Competition.

It is stated that the history of all State railroad commissions which have power to make rates is that they finally come to this conclusion as the easiest and most equitable manner of settling a very intricate and vexing question. These assertions must have been made in the interest of the railroads with the object of trying to frighten interior jobbing points into believing that all sorts of terrible things will happen should any attempt be made to regulate freight rates. How utterly futile any attempt to force transcontinental railroads to place their freight tariffs on a mileage basis with an ascending ratio as the distance increases, through to the Pacific Coast terminals, despite ocean competition, can be plainly seen. The transparent fact is that rates to Pacific Coast terminals are entirely governed by water competition, and the further fact remains that if there were very poor or irregular service by water, still the water route is open to all, and if railroads should advance freight rates materially, more ships and better service would immediately appear to beat the rates down again.

Should a commission seek to make the railroads reduce their tariffs so that, *on a mileage basis* across the continent they would come anywhere near equaling water rates, the courts would soon set the order aside, as it would be actually confiscatory, which the Constitution prohibits. It is unfortunate for Spokane that she is so situated geographically that she has no advantage from any water route. But I maintain her position is not well taken when she complains of being discriminated against in her westbound rates. It would seem to me she should complain of her eastbound rates—of the rates from the Pacific Coast back to Spokane. With a low water rate to the coast and a low distributing rate back, her rates from the East would also be lowered, because they must ever remain (on goods such as are continually being shipped around the Horn) the sum of the transcontinental rate to the coast, plus the local rate back, and her complaint lies not with a national tribunal, but with her own State Railroad Commission, as the lines from Tacoma and Seattle to Spokane lie entirely within the State of Washington.

NINETEENTH ANNUAL REPORT OF THE COMMISSION.

Again Asks Authority to Determine What Rate Should Be Substituted for the Future in Place of One Found, After Full Hearing, to Be Unlawful.

THE nineteenth annual report of the Interstate Commerce Commission was transmitted to Congress on December 14. Part of it follows:

In previous reports the Commission has repeatedly called attention to the necessity for certain amendments and additions to the present Act to Regulate Commerce, and in this report the Commission sets forth the general reasons for proposed amendments contained in the form of a bill, which has been submitted to the Senate Committee on Interstate Commerce in compliance with a request therefor, and this bill is printed as an appendix to the report. The most important amendment is delegation of authority to the Commission to determine what rate should be substituted for the future in place of one found, after full hearing, to be unlawful, with the further provision that the order of the Commission prescribing such substituted rate shall take effect within a reasonable time, unless vacated or set aside by judicial proceedings. This question has become thoroughly understood, and as the proposed legislation is now under consideration by the Congress, it seems unnecessary to repeat either the recommendations heretofore made or the reasons on which they are based. It is designed in the amendment proposed by the Commission to confer this authority in unmistakable terms and in conformity with the decisions of the Supreme Court and the opinion of the Attorney General furnished to the committee respecting the power of the courts and the constitutionality of such legislation.

The Commission recommends that the phrase "under common control, management, or arrangement," in the first section of the law, be omitted. This would make the regulating statute apply to certain

classes of carriers now exempt from its application and requirements. The definition in the first section of the term "transportation" should be enlarged so as to include the charges for various services, such as refrigeration and the like, which are now claimed to be beyond the authority of the Commission. The obligation to furnish and provide the services here referred to is also proposed, which is likewise a point now in dispute.

Refrigeration Charges.

At the present time large quantities of perishable commodities are transported over such distances that artificial refrigeration is necessary, and in such transportation the ice is just as essential as the hauling of the car. The owner of the commodity transported can no more provide the refrigeration than he could provide the transportation itself, and the consequences of an exorbitant icing charge or of discrimination in refrigeration charges are precisely as serious as the same kind of extortion or discrimination would be in the transportation charge itself. While some railroad companies furnish refrigeration themselves, in most cases it is furnished by independent companies, which usually provide the car, for which the railway pays, and the ice, for which a charge is made against the shipper. Today this business has fallen into the hands of two or three companies, of which the Armour car lines is the principal. Extended investigations by the Commission have led to the conclusion that the charges imposed are, in some cases at least, exorbitant, and that those charges are not uniformly exacted.

The Commission has held that the furnishing of refrigeration is a part of the transportation itself, and that the railway is obliged, under the present law, to

publish and maintain its charge for icing; but the railways confidently insist that providing refrigeration is a local service, which is not and cannot be put under the supervision of any Government tribunal; and that even if Congress might impose upon the carrier the duty of furnishing this service, it has not done so; that it is furnished by private persons, and not, therefore, subject to the jurisdiction of the Commission. It is not recommended at this time that the carriers should be prohibited from using private cars or from employing the owners of such cars to perform the icing service if they find that course to their advantage, but the Commission does recommend that these charges should be put on the same basis as all other freight charges, so far as they can be.

Publication and Filing of Tariffs.

In its proposed amendment to the sixth section of the act the notice of tariff changes is extended to sixty days, but the Commission may modify this as circumstances appear to require. The Commission says that such length of notice would add greatly to the stability of rates, which is a matter of great importance, but that it is not particular as to the exact time, so long as it materially exceeds the present limitation. Under the plan proposed the Commission would be enabled to allow very short notice of changes in export rates, for example, and even to dispense with their publication in proper cases. The aim is to give to the sixth section adaptability to commercial conditions and business requirements which ought not to be subjected to one unvarying requirement.

Import and Export Tariffs.

The Commission has held that the present law requires the publication and maintenance of export rates, and that good policy also demands the same course. There is no substantial reason why domestic rates should be published and maintained which does not apply with equal force to export and import rates; and to require the publication in one case and dispense with it in the other opens wide the door to all sorts of discriminations, not only with respect to import and export traffic itself, but also with respect to domestic traffic where the same person handles both species of business. In view of the fact, however, that it has been earnestly insisted that the enforcement of this rule would seriously interfere with our foreign business, especially in the handling of cotton through Southern ports and of certain imports and exports through Pacific Coast ports, the Commission decided to suspend action until Congress had opportunity to consider and act upon the subject. The Commission proposes, therefore, that the sixth section be so modified as to plainly include this species of traffic, but that the Commission be given power to suspend and modify the requirement in this respect whenever that may seem necessary in the public interest.

Through Routes and Joint Rates.

The Commission observes that, while the third section of the Act to Regulate Commerce attempts to secure the interchange of traffic by connecting railways and to prevent unjust discrimination by any carrier between its different connections, it has been held, both by the courts and the Commission, that this part of the third section is not enforceable, because no means are provided for determining the conditions upon which traffic shall be interchanged and the proportion of the through rate which shall be received by the several carriers. It follows that connecting carriers are now under no legal obligation to establish

through routes or joint rates, and may, at their pleasure, withdraw from such arrangements when they have been actually entered into. When it is considered that a large part of the most important rates of this country are joint rates, it will be seen that the railways have it in their discretion by this means to largely defeat the purpose of the law, and that in order to prevent this the Commission should have authority to order railways to continue through routes and joint rates which are in effect, and to prescribe the divisions which the several carriers shall receive in the distribution of those rates, in case the carriers fail to agree upon such divisions. It is also pointed out that discriminations against individuals and against particular species of traffic can be effected by the refusal of a carrier to establish a joint rate upon given commodities.

Terminal Roads, Elevator Charges, Private Cars.

There is an important class of cases in which the owner of the property performs a part of the transportation service, and where the carrier, by paying such owner an extravagant sum for the service rendered thereby, prefers him to other shippers of like property. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such preferences may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain, or the payment of excessive mileage upon the private car which conveys the property of the owner of the car. Investigations made by the Commission leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another. The Commission should be empowered in a case of this kind to determine whether the allowance to the property owner is a just and reasonable compensation for the service rendered, and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available.

Examination of Books of Accounts.

An efficient means of discovering illegal practices would be found in authority to prescribe the form in which books of accounts shall be kept by railways, with the right on the part of the Commission to examine such books at any and all times through expert accountants. This recommendation has been urged upon the attention of Congress in previous reports, and it is earnestly renewed at this time. Probably no one thing would go further than this toward the detection and punishment of rebates and kindred wrongdoing. Certain carriers now refuse to make the statistical returns required by the Commission. Admitting the right of a railway company to use its money as it sees fit, it is certainly proper that the Government should know what use is made of it, and whether the rates and charges imposed are legitimate. The Commission has also recently required carriers to furnish statistics showing the rate per ton per mile actually received for the movement of certain kinds of carload traffic, but this requirement has not been generally complied with. The carriers objected, partly upon the ground of expense in keeping the necessary statistics, and also for the reason that if the public knew the rates actually received for the transportation of these commodities it would have a tendency to create discontent with the rates. The Commission is satisfied that the expense

would not be an undue burden and that the information would be of distinct value.

The Supreme Court has held that the Federal courts have no power to compel the making of these returns by mandamus, and the act itself imposes no penalty of consequence for failure to make the returns. The proposed bill provides a suitable penalty for unreasonable failure to make these returns and that the Federal courts shall have statutory authority to act by mandamus.

Other Amendments.

The sixteenth section, which relates to enforcement of the Commission's orders and their judicial review, is remodeled. The intended effect of this provision would be to compel a carrier to comply with an order of the Commission or resort to the courts for its suspension and annulment on the ground that it was unlawful.

A new section is here added which expressly authorizes the Commission to review and modify its own decisions. The last paragraph of the new section limits the duration of an order of the Commission by providing that an order which has been complied with for the period of one year shall not thereafter be in force as against the carrier so complying therewith. The effect of this would be to give the carrier freedom, upon the expiration of the time named, to exercise its own initiative as to the matters affected by the order.

The other subjects of regulation heretofore considered, and which are not included in the Commission's proposed bill, such as uniform classification, ticket scalping, free passes, and the like, are not overlooked or regarded as unimportant, but as they are altogether subordinate to the essential matters embraced in the bill submitted, they are not further discussed in the report.

Rebates and the Elkins Law.

In the annual report for 1903 the Commission endeavored to explain the changes in the regulating statute effected by the Elkins law, which was approved in the previous February, and made some favorable comments upon its operation, and a similar opinion was expressed in the report made a year ago. Further experience, however, compels the Commission to modify in some degree the hopeful expectations then entertained. Not only have various devices for evading the law been brought into use, but the actual payment of rebates as such has been here and there resumed. Instances of this kind have been established by convincing proof, on which prosecutions have been commenced and are now pending. More frequently the unjust preference is brought about by methods which may escape the penalties of the law, but which plainly operate to defeat its purpose. While this does not imply any want of satisfaction with the Act of 1903, which is regarded as a most admirable measure, nor any belief that there is a general return to former practices, it does mean that this type of evil has by no means disappeared and that it is liable to increase unless effectively restrained.

Accident Reports.

The Commission recommends that the accident report law of March 3, 1901, be amended so as to require that accidents of every kind and to all classes of persons shall be included in the monthly reports, the form of such reports to be regulated by the commission. The matter of accidents could then be omit-

ted in the annual reports, since the whole subject would be covered by the monthly reports.

Complaints, Hearings and Investigations.

The report shows 568 complaints filed with the Commission during the year, including both formal and informal proceedings. The number of investigations on formal complaint instituted during the year is 65, involving directly the rates and practices of 321 carriers. Seventy-nine hearings and investigations were held in Washington and numerous cities in various parts of the country. Six cases were settled through concession of relief by the carriers and 22 cases were discontinued.

Decisions of the Commission.

Forty-five formal decisions have been rendered during the year. This number, greater than in any previous year, includes cases of unreasonable rates, discrimination between localities, between commodities and between persons, and also in facilities of transportation, with some cases involving departure from published tariff rates and some relating chiefly to reparation. Nearly every kind of action prohibited by the regulating statute has been the subject of decision and order during the past year. The cases are stated briefly in the report under these headings. Eleven of the cases are discussed under the head of unreasonable rates, and a few additional cases of unreasonable rates appear in the statement relating to reparation.

Proceedings for Injunction Under the Elkins Act.

The cases referred to under this heading are the Santa Fé rebate case, the pending case against the Milwaukee Refrigerator Transit Company and the Pabst Brewing Company in the United States Circuit Court at Milwaukee, and the Chesapeake & Ohio coal case, which has been argued and submitted in the Supreme Court.

Criminal Proceedings.

The report shows indictments returned in the Western District of Kentucky against Sebastian Zorn, Thomas G. Williams and Jesse Bushfield, alleging acceptance of rebates in violation of the Elkins Act; also the conviction of Samuel Weil, B. S. Cusey, V. D. Shipworth and C. E. Todd, of the Schwarzschild & Sulzberger Company, for conspiring to obtain transportation at less than the published rates. The defendants plead guilty and were sentenced to pay fines amounting to \$25,000. The report also shows the discontinuance of cases against the Western & Atlantic Railroad Company and others, in the Northern District of Georgia, and against the Illinois Central Railroad Company and others in the Western District of Tennessee. These cases were based upon alleged pooling.

Court Decisions.

The various court decisions which have been rendered during the year, construing the Act to Regulate Commerce, are briefly stated in the report. Only one decision has been rendered by the United States Supreme Court during the year in cases relating to the Act to Regulate Commerce, and that was in a proceeding arising upon petition of the Commission for mandamus to compel filing of an annual report.

Statistics of Railways.

One of the publications annually issued by the Commission is a brief report on the income accounts of operating roads, which is intended to show, at the

earliest practicable date, the principal items included in railway income accounts. The preliminary report for the past fiscal year includes returns for 752 companies, representing an operated mileage of 214,477.82 miles, which is presumably about 99 per cent. of the mileage that will subsequently be covered by returns in the final report for the same year. The gross earnings of the railways for the year ending June 30, 1905, on the mileage just stated, were \$2,073,177,325. This total comprised earnings from the passenger service, \$572,109,366; earnings from the freight service, \$1,449,182,702, and miscellaneous earnings, \$51,885,257.

According to this preliminary report, the gross earnings from operation averaged \$9,666 per mile of line. This average is considerably higher than the like average for any other year for which a statistical report has been published by the Commission. The final report for the year ending June 30, 1904, showed that the total gross earnings of the railways on 212,243.20 miles of line for that year were \$1,975,174,091, being equivalent to \$9,306 per mile. Of the gross earnings per mile of line, the passenger service contributed \$2,667 and the freight service \$6,757. The operating expenses of the railways embraced in the current preliminary report amounted to \$1,383,584,404, thus averaging \$6,451 per mile of line. For the year ending June 30, 1904, the operating expenses reported finally were \$1,338,896,253, or \$6,308 per mile. This advance report gives the ratio of operating expenses to earnings as 66.74 per cent. The final report for the year 1904 gave 67.79 per cent. The preliminary report shows that the net earnings of essentially the same roads were, for the year ending June 30, 1905, \$689,592,921, and for the year ending June 30, 1904, \$634,674,561.

The railway companies for which returns are included in this advance report also received \$114,636,642 in the form of income from investments in the stocks and bonds of railway and other corporations and from other miscellaneous sources. The net earnings increased by this sum give a total income of \$804,229,563. The aggregate deductions chargeable against this income were \$713,994,800. The principal items included in such deductions were interest on funded debt, rents of leased lines, permanent improvements charged to income, taxes (which were \$58,533,381), and dividends. Thus the surplus resulting from the operations of these roads, which the preliminary report covers, was \$90,234,763. The complete report for the year ending June 30, 1904, covering both operating and leased roads, showed a surplus of \$56,729,331, and the like report for 1903 a surplus of \$99,227,469.

The preliminary report shows that the operating companies declared dividends during the year to the amount of \$196,080,237; it further shows that the dividends declared by practically the same roads during the year 1904 were \$184,313,472. These figures indicate an increase in dividends of \$11,766,765. It should be borne in mind, however, that the preliminary reports are confined to the returns of operating roads only, and so exclude all dividends declared by subsidiary companies, the property of which is leased to others for operation. For the year ending June 30, 1904, the final statistical report showed that the total amount of dividends declared by all the railway companies covered by that report—that is, both operating and leased lines—was \$221,941,049.

In the Commission's report there is also a synopsis of the Seventeenth Annual Report on the Statistics of Railways in the United States for the year ending

June 30, 1904, a detailed report of 709 pages, which is uniform with others in the series.

The Commission has also included in its report some extracts from the recently issued report on the "Commercial valuation of railway operating property in the United States, 1904," prepared by the Bureau of the Census of the Department of Commerce and Labor, with the co-operation of the Interstate Commerce Commission.

Safety Appliances and Accidents.

Within the past year decided improvement has taken place in the condition of safety appliances on all roads subject to the provisions of the statute, and at no time since the safety appliance law became effective have the results of its operation been so satisfactory as at present. This gratifying condition is in great measure due to the action of the courts in clearly defining the statute, leaving no room for doubt concerning its proper interpretation and application. As a result, the practice with regard to safety appliances is now substantially uniform throughout the country. Another important factor in the betterment of conditions is the abrogation of local agreements at many prominent interchange points, whereby carriers, with the idea of facilitating the movement of traffic, received and delivered cars in defective condition. This action resulted from conferences held with railroad officials at the instance of the Commission. The rule now coming into general observance is that cars will neither be received from nor delivered to connecting roads when safety appliances do not in all respects meet the requirements of the law. This improved condition is reflected in the Commission's accident statistics.

There is a noticeable tendency toward uniformity in couplers and uncoupling attachments and an increase in their strength, decreasing the number of defects.

Grab irons are receiving much better attention than formerly, and it is now the exception to find cars unequipped with this important safety device. Still steps, ladders and roof hand holds, when defective, introduce a great element of danger, and these appliances should be covered by the statute.

The great progress in the use of air brakes has been accompanied by marked deterioration in the condition of hand brakes, the uses of which in times of emergency are mentioned. There is still room for improvement in the maintenance of the retaining valves of air brakes.

Increase in Percentage of Power Brakes.—Returns made to the Commission show that on October 1, 1905, out of a total of 1,790,113 freight cars, 1,564,396 were equipped with air brakes. About 111,122 private cars are also practically all equipped with this appliance.

The Commission ordered, during the present year, after hearing, that on and after August 1, 1906, a minimum of 75 per cent. of the cars in all trains required to be operated by power brakes must have their brakes used and operated. This is in lieu of the present lawful minimum of 50 per cent. In addition to this, the law requires that all power braked cars associated together with the minimum shall have their brakes used and operated. It is expected this increase will have good effect in giving better control of trains, and will hasten the abandonment of a number of old and light cars which are a menace to safety.

Violations of the Act.—With few exceptions carriers have cheerfully co-operated with the Commission in its efforts to secure compliance with the law, such

violations as the Commission has been compelled to report for prosecution being due to laxity of subordinate officials or employees in the performance of their duties, or to their failure to observe instructions, rather than to willful intent of responsible officials to evade or resist the law.

Inspection Service.—The inspection service at present consists of 18 inspectors. With this small number of men unavoidable delay in the investigation of complaints is inevitable. This creates a feeling of dissatisfaction and subjects the Government to the charge of laxity in the administration of the law. Each separate complaint must be investigated, and as complaints are constantly being received from widely separated sections of the country, long stretches of travel and much time are involved to secure investigation in many cases. It also results that some roads complain that successive charges of violation are brought against them, while other roads, which are perhaps as great or even greater offenders, escape without prosecution. This is due entirely to insufficiency of the inspection service. The list of roads against which prosecutions have been entered represents merely the area of activity of the inspection service. As a matter of fact, conditions may be vastly better on many roads that have been prosecuted than on roads which have entirely escaped prosecution. Many lives have been saved and many injuries averted through the administration of this law, and a necessary

element of proper administration is the maintenance of an adequate inspection service.

Hours of Labor.—The hours of labor on railroads is another topic discussed in the report, and the Commission says that the need of a high standard of physical and mental condition for certain classes of employees and care on the part of supervisory officers to see that proper regulations are maintained and obeyed is quite generally recognized, and a considerable number of railroads have prescribed rules limiting the number of hours of work and providing rest periods, but these rules appear to have been very poorly enforced.

Accidents.—The accidents shown in the monthly reports made by railroads under the law of March 3, 1901, have been regularly published in the Commission's quarterly bulletins. The block system, the lack of which is understood to be the cause of those accidents in the most numerous class, has been fully discussed in the last two annual reports of the Commission. The Commission has urged the passage of a block signal law to prevent rear end collisions, because, first, collisions constitute the greatest single cause of death and injuries to passengers; and secondly, because this is a preventive which is known to be easily applied. The Commission further recommends that the Government should investigate train accidents and promptly furnish the facts concerning them. Such investigation is a matter of public interest.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

CALENDAR OF HEARINGS.

January 3, 1906, Fort Wayne, Ind.

McMillen Grain Company vs. Cincinnati Northern Railroad Company.
 A. J. Phillips Company vs. Grand Trunk Western Railway Company et al.
 Weil Brothers & Co. vs. Pennsylvania Railroad Company et al.
 James E. Eaton vs. Cincinnati, Hamilton & Dayton Railroad Company.

January 5, 1906, Louisville, Ky.

Railroad Commission of Kentucky vs. Louisville & Nashville Railroad Company et al.

COMPLAINTS FILED.

Fisk Rubber Company vs. Pennsylvania Railroad Company et al.

Unjust classification of solid rubber tires in packages and bicycle single tube and double tube types of rubber tires, crated or boxed.

Donohue Coke Company vs. Pennsylvania Railroad Company et al.

Discrimination in distribution of cars for shipments of coal.

National Machinery and Wrecking Company vs. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company et al.

Unreasonable rates on second hand dynamos.

HEARINGS HELD.

December 2, 1905, New York, N. Y.—Waverly Oil Works vs. Pennsylvania Railroad Company et al. Unjust classification of petroleum and its products in Official Classification territory.

December 2, 1905, New York, N. Y.—Fred G. Clark Company vs. Lake Shore & Michigan Southern Railway Company et al. Unreasonable rates on petroleum and its products from points in Pennsylvania and Ohio to points in Rhode Island and Connecticut.

December 11, 1905, New York, N. Y.—M. Newman vs. New York Central & Hudson River Railroad Company et al. Unjust classification of rubber scraps in less than carloads.

December 19, 1905, Washington, D. C.—Waverly Oil Works vs. Pennsylvania Railroad Company et al. Second hearing.

December 19, 1905, Washington, D. C.—Fred G. Clark Company vs. Lake Shore & Michigan Southern Railway Company et al. Second hearing.

December 27, 1905, Chicago, Ill.—W. Scheidel & Co. vs. Chicago & Northwestern Railway Company. Unjust classification of "Scheidel Coil Outfit."

December 28, 1905, St. Paul, Minn.—F. J. Hoerr vs. Chicago, Milwaukee & St. Paul Railway Company. Unreasonable rates on carload shipments of potatoes.

December 29, 1905, St. Paul, Minn.—Pine Island Farmers' Elevator Company vs. Chicago Great Western Railway Company. Unreasonable rate on wheat, barley, rye and other small grains from Pine Island, Minn., to Chicago, as compared with the rate on the same articles from Red Wing, Minn., to Chicago.

ALLEGED OVERCHARGE AND MISROUTING.

In opinions by Commissioner Clements, the Commission has recently decided two cases brought by the Dewey Brothers Company, of Blanchester, Ohio, against the Baltimore & Ohio Railroad Company and others, one case involving an alleged overcharge on two carloads of hay, and the other involving alleged misrouting, and consequent excessive charge, on a carload of the same commodity.

In the case involving overcharge, it appeared that the complainant shipped two carloads of hay from Pataskala, Ohio, about May 8, 1902, one to Wilmington, N. C., and the other to Greenville, N. C. Concerning the rates on these shipments the Commission says in its decision:

The lowest combination published on the date of shipment was 30 cents for the through rate to Greenville, and if 36 cents, as alleged by complainant, was charged and collected on this car, it was clearly an overcharge of 6 cents per 100 pounds, for which the carriers are liable.

The carriers deny the collection of any higher rate than 30½ cents, and there was no positive evidence offered at the hearing of the payment of 36 cents per 100 pounds. The payment had not been made by complainant, but by consignee, as was alleged, and no receipt from the carriers or other evidence of actual payment by the consignee was placed in evidence. There was no evidence to support the contention that the published rate was unreasonable from either Pataskala or Columbus, and the rates are now the same from both points to Richmond when destined beyond, 20 cents per 100 pounds, or 6 cents higher than at date of shipment. That the rate from Pataskala to Richmond should be 14 cents, while the rate from Columbus was but 9 cents per 100 pounds, is the basis of the claim of discrimination to which attention is called. The number of roads centering at Columbus, and the initial reduction by a rival line at that point, the Norfolk & Western, of the rate on hay to 9½ cents per 100 pounds to the Virginia cities when destined beyond, make such a competitive condition at that point as, under the rulings of the Supreme Court, circumstances and conditions not being substantially similar, creates a situation which does not necessarily demand like rates.

Upon the shipment of hay from Pataskala, Ohio, to Wilmington, N. C., there was clearly an overcharge of 1 cent per 100 pounds, which defendant in the answer and by counsel professed willingness to adjust. Upon the shipment from Pataskala, Ohio, to Greenville, N. C., the published rate in effect was 30 cents, and all above that rate was an overcharge, which should be refunded. The defendants claimed that the rate charged was 30½ cents, which would be ½ cent overcharge, but complainant contended 36 cents had been paid, an overcharge of 6 cents per 100 pounds.

An order might be entered at this time for the refunding of this overcharge if the evidence of the

payment of 36 cents was quite clear. The complainant did not claim to have paid the 36-cent rate to Greenville, but testified the payment was made by "the consignee; I do not remember who it was in this instance." The freight receipt, or the statement of the consignee, or any direct evidence of the payment of the \$72 instead of \$60 upon this car would have warranted the issuance of an order.

The above findings and conclusions clearly indicate a basis for an adjustment of the claim between the parties in interest which will no doubt result in a prompt and amicable disposition of the matters in dispute. The case will therefore be left open for this purpose, and on the failure of the carriers to adjust the claims along the lines above indicated, a further hearing will be fixed for the admission of the necessary evidence of the payment of the overcharge, and upon such proof an order to refund the same will be entered.

In the case involving alleged misrouting, it appeared that the Dewey Brothers Company shipped a carload of hay from Summit, Ohio, to Lenoir, N. C. The complainant alleged that his instructions were that the car be shipped via "Strasburg Junction and Southern Railway." The initial defendant averred that the instructions given were to route "via Cincinnati and the Southern Railway."

The rates by way of the Virginia cities, established and in force at the date of shipment, were 5 cents per 100 pounds up to Columbus, 9 cents thence to Richmond or Lynchburg, and 26 cents thence to destination, a total of 40 cents per 100 pounds, while the published combination rates via Cincinnati were 10½ cents per 100 pounds to the latter point and 35½ cents thence through to point of delivery, a total of 46 cents per 100 pounds, or \$92 for the carload of 20,000 pounds from Summit to Lenoir. In its conclusions the Commission says:

In the absence of any instructions by the shipper it would appear to be the duty of the receiving carrier not only to charge the lowest combination of rates between given points, but to give to the shipper the advantage of the shorter route and lower rate. If the carrier had, contrary to the positive instructions of the shipper, taken the responsibility of routing the car by indirect, expensive lines instead of the obvious direct and cheaper route, or had, without any instructions, so routed the car as to burden the shipper with needless expense of the longer route, it would be *prima facie* unjust and unreasonable, and would without explanation constitute a fair basis for an order requiring the carrier to reimburse the shipper for the overcharge thus wrongfully imposed.

But in this case that there were some instructions appears both from the complaint and answer. The impossibility of determining what those instructions were from the evidence submitted leaves the Commission with no adequate grounds for a finding on the subject. The pleadings on both sides allege instructions, and these are contradictory, the defendants being under oath.

The complainant was not clear on the subject. Its only witness examined said: "We gave the instructions, I think, over the telephone to the party who loaded the hay, and he in turn gave verbal instructions to the agent;" and again: "I think I did, but I may be mistaken about it," and this could well be, since the hearing was more than three years after the transac-

tion occurred. Neither the shipping agent of complainant nor the station agent of defendant, the actual parties to the instructions, were present to testify. The complainant submitted two letters from a division freight agent of a defendant, in one of which the subject of instructions is not mentioned, and another to a Baltimore division freight agent, in which it is recited that the station agent at Summit had followed the oral instructions of the shipper, who "asked that it be routed via Cincinnati and the Southern Railway," and in commenting on a possible misunderstanding, said it was an "even break" whether the agent misunderstood or the shipping agent has given instructions.

It is clear that even if the duty of the agent had been to ship by the route giving the lowest combination in the absence of instructions, the agent is relieved of that responsibility of direction in the face of specific instructions by a shipper when the agent consents to the routing suggested. It is customary for the agent to sign three bills of lading—one usually taken as the original, which is sent to the consignee, one for the files of the office, and one for the files of the shipper.

Where instructions for shipping are out of the ordinary course and the agent consents to bill by the route indicated, it should appear on the bill of lading, and the shipper thus receives immediate notice of the route; this is not always complied with, and it may happen that the bill of lading gives no evidence of instructions or routing. No bill of lading was in evidence, and the complainant was not positive as to the method even of giving its instructions.

Upon the facts appearing, it is impossible to conclude that defendant violated instructions when it is impossible to find from the evidence what these instructions were. By the route selected the rates charged and collected were the legally published rates of defendants for the haul. There was no allegation or evidence that these rates by this route were unreasonable for the service rendered, but only a protest against the route by which the car was shipped, and the responsibility for this selection was not so clearly fixed upon defendants or their agents as to warrant an order for reparation. The complaint must therefore be dismissed.

IMPORTANT DECISIONS IN BRIEF.

Passengers on Freight Trains.

Though a carrier should take a passenger on a freight train it is not required to equip it with conveniences for passengers, and one who becomes a passenger does so at his own peril. On the duties of carriers in this respect the court said:

"Freight trains are not equipped for the carriage of passengers, and public carriers are not required to equip them for that purpose. (*Railway vs. Canman*, 52 Ark. 517, 13 S. W. 280; *Krumm vs. St. L., I. M. & Sou. Ry. Co.*, 71 Ark. 590, 76 S. W. 1075; *Chicago & A. Ry. vs. Arnol*, 144 Ill. 261, 33 N. E. 204, 19 L. R. A. 313.) "A passenger riding in a freight train or a mixed train must be deemed to assume all the inconveniences and risks usually and reasonably incident to transportation or travel on such trains, and is not entitled to insist upon having the same care and attention that he might justly demand upon a regular passenger train." (4 Elliott on Railroads, Sec. 1629. *Hutchinson on Carriers*, p. 616; 1 Fetter on Carriers of Passengers, pp. 33, 34; *Olds vs. New York, etc., Ry. Co.* 172 Mass. 73, 51 N. E. 450.) But where the railroad company undertakes the carriage of passengers on freight trains, it owes such passengers the same high degree of care to protect them from injury as if they were on

a passenger train. (*Hutchinson on Carriers*, p. 614; 1 Fetter on Carriers of Passengers, p. 585; *Erwin vs. Railway Co.*, 94 Mo. App. 289, 68 S. W. 88; *Chicago & A. Ry. Co. vs. Arnol*, supra.) Judge Thompson states the rule thus: "We find the courts are agreed upon the proposition that, where a railway carrier carries passengers upon its freight trains, it thereby assumes toward them the relation of a carrier to his passengers, and while, in such a case, it is a reasonable conclusion that the passenger assumes the increased risk incident to the operation and management of such trains, yet, subject to this qualification, the railway company becomes bound in favor of the passenger by all the obligations of a common carrier upon a regular passenger train." (3 Thompson on Negligence, Sec. 2901. *Rodgers vs. Ch. O. & G. Ry. Co.*, 89 S. W., Rep. 468.)

Where a bill of lading, though issued by the originating carrier, showed that it was a contract for a through shipment, and the goods covered thereby were delivered to the connecting carrier and by it carried under the bill of lading, the connecting carrier became a party to the original contract by adoption. On this subject the court said: "The contract was an affreightment of live poultry from Trenton, Ky., to Chicago, Ill. Its course was not stated in the bill of lading further than Evansville, Ind. Nevertheless, the whole document showed that the car was destined for Chicago, and was to be taken by the Louisville & Nashville Railroad part of the way, and then delivered by it to connecting carriers, who were to carry it the remainder of the distance and deliver it at destination. Such connecting lines, when the car was delivered to them and was carried under the original bill of lading, became parties to the original contract by adoption and ratification of its terms." (*C. & E. I. R. Co. vs. Chestnut Bros.*, 89 S. W. Rep., 298.)

Where, by reason of the dangers of the seas, a vessel is abandoned, such abandonment is a renunciation of the contract of affreightment, and entitles the owners of the cargo to complete the voyage, particularly where the master has not rejoined the vessel before anyone else has taken possession, or has not secured the craft and cargo from the salvors before the owners of the cargo have announced their intention not to proceed. (*The Eliza Lines*, 26 Sup. Ct. Rep. 8.)

Where a conductor of a train considered it his duty to reject a ticket by reason of its apparent invalidity, but uses no unreasonable force, he is not guilty of a tort. And, should a jury award a verdict of \$1,000 where it appeared that the passenger was compelled to walk about a mile and there remain until the next day, such a verdict is excessive. (*Sou. Ry. Co. vs. Hawkins*, 89 Sou. W. Rep. 258.)

Where one ships fowls in coops and crowds them unduly, so that they die during transportation, an express company is not under the duty to refuse them on account of their crowded quarters and hence is not negligent in the premises and will not be held liable for the resulting damages. (*Cohn vs. Platt*, 98 N. Y. Supp., 535.)

Where a consignee has been notified of the arrival of goods, has paid the freight and permitted a portion thereof to remain on the uninclosed platform or shed of the carrier, according to custom, it is not liable for damages if the goods be injured by the elements. (*Stone vs. Clyde S. S. Co.*, S. E. Rep. 894.)

Where a statute provides that the consideration of a written agreement need not be stated therein, a carrier was held liable for failure to deliver the shipment in due season, where the bill of lading did not state the consideration. (*C. & E. I. R. Co. vs. Chestnut Bros.*, 89 S. W. Rep., 298.)

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES.

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Notices of Changes in Freight Rates.

To the Editor of Freight:

SIR—What notice must railroads give in the State of West Virginia before altering the freight rate there, by reason of a direct increase in the rate, or by changing the classification? Supposing that freight originally leaving West Virginia is carried to New York by a railroad or railroads other than that by which it originates: is a notice posted on the premises of the second railroad handling the given freight legal notice to a shipper at some point not on the railroad, where the notice is posted? In other words, is a shipper in West Virginia supposed to have cognizance of notices posted all the way to New York, on roads other than that to which he delivers the goods? G. L. C.

BOSTON, Mass., December 5, 1905.

If our understanding as to the scope of this question is correct, it has not been definitely decided. It is assumed, first, that the traffic in question is interstate, and second, that no through rate is in effect and that the charge from the point in West Virginia to New York is a combination of rates to and from some intermediate point. Of course, the shipper at the point of origin cannot be said to have notice of a combination rate, part of which is published at his station and the other part at some other station along the through line. The first carrier is only required to publish its individual rate, and changes in that rate and in the classification, and the same is true of the second carrier at the points on its line. Where no through rate is in effect the carriers must apply their local charges. It is not clear, however, that a contract between the first carrier and the shipper for a given through charge less than the sum of the locals may not be enforced by the shipper in the courts. This was done in the case of Pond-Decker Lumber Co. vs. Spencer, 86 Fed. Rep. 846. This decision proceeded upon the theory that the shipper could have no knowledge of a total combination charge.—[Ed.]

Actual Weight of Lumber Shipments.

To the Editor of Freight:

SIR—In our business we ship a great many cars of lumber during the year and it frequently occurs that the shipment is assessed on the freight bill at a great deal heavier weight than we know by reasonable estimates from the invoice that the lumber should come to.

I have a case before me now where we shipped a car about 2,000 miles where the estimate on the lumber was 52,192 pounds. The railroad billed it at 57,200 pounds. This being a difference of 2,000 pounds, we took issue on the weight and had it weighed in wagon loads as taken from the car and sworn certificates made as to the weight, and thus found the actual weight to be 52,030 pounds. This figure being corroborated by the estimated weight of the lumber, we accordingly made claim for the difference between this carefully obtained weight and the weight charged, 5,170 pounds, which amounted to something like \$25. The railroad writes

us back that it does not see sufficient proof to justify setting aside its track scale weights, and declines the claim.

It would seem to me that it would be impossible for us to procure any further proof, and that we have exercised all possible care. The fact that the railroad weighmaster states that the car was carefully spotted and weighed would develop in any similar claim, for the weighmaster could not afford to admit negligence and probably did not commit gross negligence in this case, but yet did not carefully weigh the car.

As it seems this is a very simple case and does not admit of very deep investigation, we would merely like to receive your ideas. As we are heavy shippers, we have many similar cases. B. K. E.

ST. PAUL, Minn., December 1, 1905.

Cases of this description are extremely difficult to determine, for in such cases there is sharp conflict of testimony as to the actual weight of the articles transported. The carrier relies upon the railroad scale weight and the shipper or consignee by separate weighing or by estimates frequently proved correct that the railroad scale weights are wrong, and both sides can easily produce affidavits in support of their contentions. Possibly many of these disputes could be avoided if shippers would take pains, when lumber is weighed at the point of shipment, to see whether the railroad scale weights exceed the weight deemed by them to be correct, and to fight out the proposition at that time and place rather than to wait until the lumber is delivered and a claim for overcharge is made necessary. Where the lumber is weighed at some intermediate point the situation is much more difficult to handle, and we are not prepared at present to offer a suitable suggestion other than to say that frequent cases of overcharge based on excessive weight apparently would furnish a basis of conference with the railway officials, with a view to having instructions issued relating to more careful practices on the part of the railroad weighmasters. Considerable disparity in weights may result in the case of lumber through exposure to the weather. Where a car and its load are weighed together en route and the marked weight of the car is used as the tare, it is apparent that variation in the actual weight of the car caused by weather exposure might be an important item.—[Ed.]

Violation of the Long and Short Haul Section?

To the Editor of Freight:

SIR—We are having some trouble with the Illinois Central Railway regarding the rate on lumber from Barlow, Ky., to Moline. The best rate that they will make on this business is 16 cents per hundred. The rate from Paducah, Ky., to Moline is 12 cents. All Paducah freight is moved via East Cairo, Ky., and therefore passes through Barlow. We insist that the freight from Barlow should not be more than the rate from Paducah. This branch of the

Illinois Central has only been in operation a little over a year, and before that time Paducah freight was ferried across the river from Paducah to Brookport, Ill. The rate from Brookport is 10 cents, and the charge for ferrying the cars across is 2 cents.

The railroad does not deny that all Paducah freight moves via East Cairo. The only reason it gives for charging 16 cents is that conditions are such that they cannot meet the Paducah rate. The East Cairo rate to Moline is 11 cents, and the rate from Bardwell to Moline is 13 cents.

Kindly give us your opinion on this matter.

M. W. Co.

MOLINE, Ill., December 12, 1905.

The rate from Barlow, Ky., to Moline, Ill., is 16 cents a hundred pounds, and the rate from Paducah, Ky., to the same destination is 12 cents, notwithstanding the fact that the haul from Barlow is less than from Paducah. This case is one which is in apparent direct conflict with Section 4 of the Act to Regulate Commerce, which reads as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall be not construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; provided, however, that upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Subject to the proviso of that section—and we are not advised whether or not application has been made to the Commission for relief from this section in the particular case—it may be stated that the construction which the courts have placed upon the words “substantially similar circumstances and conditions” has practically nullified the operation of this section of the statute.

The probable defense of the carrier in this case would be that water competition from Paducah would keep the rate down to 12 cents, and there being no water competition from Barlow, it would attempt to maintain that the rate of 16 cents from that point is a reasonable rate. Water competition, to constitute an available defense, must be controlling; that is to say, there must be sufficient facilities for the transportation of the particular commodity, and also the commodity must move in such quantity as would justify the lower charge from the point of origin from which water transportation is available. If such facts can be substantiated, the defense is good, and whether or not this defense would prevail is a question largely of statistics. At this time we are not in possession of the tonnage moving from Paducah to Mississippi River points, and cannot, therefore, state whether or not the defense is a valid one.—[Ed.]

TOOK FREIGHT FROM THE SHIPPER.

Judgment Given Against the Pennsylvania Railroad for \$700 in Favor of the Harrison Granite Company.

The Harrison Granite Company, of New York and Adrian, Mich., made a monument for the memorial of Gen. Dabney H. Morey, to be unveiled on or about the 26th day of October, 1903, in the cemetery at Richmond, Va. It was made under contract with the Daughters of the Confederacy of Pennsylvania. This organization had no financial strength, but had collected \$1,500 by penny collections, which was to be the price of the monument. There was some delay in the association approving the bronzes. It had arranged for excursions for the unveiling. The Harrison Granite Company at New York was appealed to and got the stone shipped out of Barre, Vt., on the Central Vermont Railroad, consigned by the Harrison Granite Company, Barre, Vt., to the Harrison Granite Company, Richmond, Va.

The stone would have gone through in the usual way and in ample time. The husband of one of the Daughters executed the contract and appealed to the officials of the Pennsylvania Railroad Co. to take this car by special service to Richmond, an expense of \$700, and took \$700 of the \$1,500 from the Daughters, so that they only had \$800 left to pay the Granite Company. When the Harrison Granite Company learned of this it telephoned to the Pennsylvania Railroad and instructed it not to take this shipment by a special service. The Granite Company said it was responsible, and if the monument were not there on time, which it felt it would be, it could be made to pay any damage claimed. But the railroad company took possession of the freight, took it away from the shipper, and got the \$700. The Harrison Granite Company received the stone and set it up. The railroad company claimed that, because the Harrison Granite Company (a Michigan corporation) receipted for the shipment, that ended the matter. The Harrison Granite Company is a Michigan corporation, with headquarters in Adrian, Mich., and executive offices in New York city, and quarries at Barre, Vt.

Under the Michigan statute the Granite Company sued the Pennsylvania Railroad by garnisheeing the Lake Shore Railroad Co. on the theory that the Lake Shore had freight cars belonging to the Pennsylvania Co., and also that it owed money to the Pennsylvania Railroad Company for traffic balances. The company was brought into court in this way and the court held that by taking the shipment away from the common carrier selected by the shipper, arbitrarily, and taking the \$700, the railroad had placed the Granite Company where it could not collect its claim in full, and, therefore, had injured the Harrison Granite Company to that amount, and judgment was rendered accordingly.

We are indebted to Smith, Baldwin & Alexander, of Adrian, Mich., attorneys for the Harrison Granite Company, for the facts recited.—[Ed.]

STRICTLY FROM A LEGAL POINT OF VIEW.

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Loss of Commissions Through Delay of Shipment.

Where one seeks damages for delay in delivering freight, the rule laid down in the case of *Hadley vs. Baxendale* has been approved by the Supreme Court of Oklahoma. The plaintiff sued for \$1,000 because of alleged loss of commissions which he claimed he would have secured by the sales of the goods but for the delay in transportation. The statute provides that "the detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery."

The claim was not for loss in market or intrinsic value of the goods, but for commissions which the plaintiff would have made had there been no delay in the transportation of the articles. It appeared that knowledge had not been brought home to the carrier that the alleged loss would be the direct and immediate result of failure promptly to deliver the goods. In the course of the opinion the court said: "There is no conflict as to the rule that the damages sought must be such as may fairly and subsequently be considered as arising naturally, in the usual course of things, from the breach itself, or such as may reasonably be supposed to have been in contemplation of the parties, at the time they made the contract, as the probable result of the breach of it. And, if special circumstances under which the contract was actually made were communicated and made known to the parties, the damages resulting from the breach of such a contract would be the amount of injury which would ordinarily follow from a breach of contract under such special circumstances so communicated and known. In order to recover profits, in case of a breach of contract, such profits must have been within the contemplation of the parties at the time that the contract was made, and where such profits do not enter into the contract itself they will be denied. Anticipated damages, different from those which would ordinarily be sustained, are not always recoverable." (*C. O. & G. R. Co. vs. Jacobs*, 82 Pac. Rep. 502.)

To the Editor of Freight:

SIR—I wish to be advised whether or not it was ever intended that the Interstate Commerce Commission should have the right to fix the rates for railroad transportation.

C. E. JONES.

ANAMOSA, Ia., December 10, 1905.

To reply to this question satisfactorily it is necessary to consider, first, the effect of the decisions of the court, and, second, to do what a court cannot rightfully do, refer to the debates at the time of the passage

of the act, endeavoring to ascertain whether or not the giving of such power was in the mind of the Legislature.

In the case of the *C. N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission*, the court, in deciding this point, said: "Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below and is discussed in the briefs of counsel.

"We do not find any provision of the act that expressly, or by necessary implication, confers such power"

The debates of Congress seem to lead to the conclusion that it was not in the mind of the Legislature to confer the power. The following extracts are of interest in this connection:

House of Representatives.

December 2, 1884.—Representative Reagan said: "If we were attempting to make regulations—if we were attempting to fix the price of freight, I agree with you a committee might be necessary, but we are trying to do no such thing." (Congressional Record, Vol. 16, p. 34.)

December 8, 1884.—Mr. Reagan said: "But it would be understood from his reasoning that my bill not only requires rates to be reasonable, but fixes the rates. There is not a word in the bill having that effect." (Vol. 16, p. 112.)

January 7, 1885.—Mr. Reagan said: "One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates—that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public, and I have intended from the beginning to avoid that difficulty. * * * The difficulty with gentlemen in considering the bill is that they cannot keep out of their minds the arguments of the railroad lawyers and lobbyists who are continually harping upon it, that this bill establishes arbitrary rates of freight. It does no such thing." (Vol. 16, p. 600.)

In the Senate.

December 18, 1884.—Senator Cullom said: "Some may object to this bill because it does not attempt to specifically prohibit pooling and rebates, or because it does not provide for fixing rates. I do not consider these objections well founded." (Vol. 16, p. 354.)

January 14, 1885.—Mr. Slater said: "We do not undertake to fix the price at which freight shall be moved upon any of the roads, but we undertake to say that certain evils which now exist shall cease to exist, and to put upon them the force of statutory prohibition." (Vol. 16, p. 774.)

January 16, 1885.—Mr. Williams said: "We cannot say what the rates on the railroads ought to be for freight or for passage money." (Vol. 16, p. 832.)

February 3, 1885.—Mr. Kenna said: "This bill was never designed, I repeat, to fix the rates of the railroads in the management of their business." (Vol. 16, p. 1433.)

Forty-ninth Congress—Senate.

April 22, 1886.—Mr. Miller said: "The bill does not attempt to fix rates. The committee did not believe it was wise

for Congress to undertake to do that with its present imperfect knowledge. It did not believe that it was wise to give that power to any commission which might be organized under the bill." (Vol. 17, p. 3875.)

May 6, 1886.—Mr. Kenna said: "What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary decision of the railroad commission." (Vol. 17, p. 4407.)

May 10, 1886.—Mr. Walthall said: "Does any Senator feel safe in announcing that Congress can confer on any commission the power to regulate the rates of transportation so as to bind the railroad companies?" (Vol. 17, p. 4489.)

May 12, 1886.—Mr. Harris said: "On the contrary, I said it did not propose to fix rates at all." (Vol. 17, p. 4609.)

House of Representatives.

July 21, 1886.—Mr. Reagan said: "The Senate bill is formed on the theory of securing a detailed regulation of freight and passenger rates, though it neither fixes any rate nor authorizes the commission to fix rates. In this it seems to be strangely illogical." (Vol. 17, p. 7704.)

In the Senate.

January 11, 1887.—Mr. Camden said: "I beg pardon, the commission is not given the power to fix rates. I contend that Congress cannot give to anybody the right to fix rates, but the commission can decide whether a rate is reasonable or unreasonable." (Vol. 18, p. 564.)

[Ed.]

False Billing and State Laws.

To the Editor of Freight:

SIR—A dealer doing business in one State shipped whiskey in molasses barrels and mineral water cases to a point in another State—that is, the State of South Carolina. The carrier was fully aware that it was accepting packages of whiskey, on which it was paid its regular whiskey rate, the plan being a device to evade the South Carolina dispensary law. Has any federal statute been violated?

B. & Co.

NEW YORK, December 16, 1905.

That such a device violates the South Carolina dispensary law of 1896 is evident from Sections 28 and 29 thereof, which prohibit expressly the transportation or possession of falsely branded packages of intoxicating liquors and prescribe penalties for such violation. The federal statute known as the Wilson Bill provides that all intoxicating liquors transported into any State shall upon arrival there be subject to the operation and effect of the laws of such State, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise; and Section 32 of the South Carolina dispensary law prescribes that such liquors on arrival in that State shall be subject to its laws. So it would seem that, though the shipment in question was interstate, the police laws of South Carolina prevail over it upon its arrival at destination in that State, federal control being waived by statute.

The Act to Regulate Commerce does not prohibit such misrepresentation so long as it is not a device to obtain transportation at less than the regular established rates. But to assume that the carrier transports whiskey as molasses or mineral water and *always* charges and collects the whiskey rate is a violent assumption. Suppose it should happen to charge the

underbilled rate, who would be the wiser? If the carrier and shipper can collude and conspire to violate the South Carolina statute, why can they not do so against the Interstate Commerce Act? The plan used is of doubtful character, and may just as easily be turned by the shipper and carrier into a device for evading the Act to Regulate Commerce.

Section 3323 of the Revised Statutes of the United States, as amended by the act of July 16, 1892, provides that every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale dealer who has paid the special tax required by law, shall be marked, branded and stamped by such wholesale liquor dealer in such manner as the Commissioner of Internal Revenue may prescribe, and contains penalties for such violation. By decision No. 566 (1902) Commissioner Yerkes held that such packages illegibly marked are subject to seizure. He also required that after January 1, 1904, every wholesale liquor dealer should mark legibly on the head of each package filled the present proof of the spirits contained in such package. (See decision No. 716, 1903.) But, as will be seen, the above provisions apply only to wholesalers, and do not apply to the shipper named in the statement given if he is a retailer. But if he is a wholesaler and blurs the marks on the barrel of whiskey (shipped as molasses) he has violated the United States statute; if he does not efface the marks the South Carolina officers, if vigilant, could easily discover the subterfuge, seize the whiskey and make the carrier pay the penalty.—[Ed.]

Local Divisions of Through Rates.

To the Editor of Freight:

SIR—Will you kindly advise us as to the legality of the following application of rates: The rate on beer from Minneapolis to Fergus Falls is 22 cents. There is a through rate published from Chicago to Fergus Falls, of which the lines west of Minneapolis receive, according to their published division sheet, 18.9 cents per hundred. We assume that this is discrimination against us in favor of Chicago shippers in hauling the same class of goods over the same line for 18.9 cents per hundred, whereas they charge us 22 cents for the same service. Are we not legally entitled to the 18.9 cents rate and also to a refund for overcharge on all such business that has moved?

M. B. Co.

MINNEAPOLIS, Minn., December 7, 1905.

It is well recognized in numerous decisions under the Interstate Commerce Law that the division of a carrier out of a through rate may be less than its charge for local service, and the mere fact that a carrier between Minneapolis and Fergus Falls received 18.9 cents out of a through rate from Chicago to Fergus Falls does not indicate that its local rate of 22 cents is unlawful. The 22 cent local rate may be unreasonable or it may be unjustly discriminating as compared with the entire through rate from Chicago to Fergus Falls, but no illegality is necessarily shown by comparison between the share of a through rate and the local charge.—[Ed.]

FOR SOLVING RAILROAD RATE PROBLEM.

H. T. Newcomb's Suggestions Before the American Association for the Advancement of Science.

In an interesting paper before the American Association for the Advancement of Science, H. T. Newcomb has put forth some solutions of the railway problem. He holds that the making of railway rates is a legislative function, and that it is not in accordance with our ideas of government that there should be legislation by a deputy legislature; that the confidence imposed on the legislature should rest in them and not be by them transferred to another body; that the existing courts are possessed of jurisdiction to correct rates, but do not seem to appreciate the discriminations which result from the present system. These, he thinks, ought to be left to the carriers, and they to have full power to give to each location its relative importance in the chart of commerce, as far as the rates are concerned. These rates ought to be the result of the negotiations between shippers and carriers.

Predicting what would be the result of deputy legislature made rates, Mr. Newcomb said:

"Give the agitators their deputy legislature and I venture to predict that one of the earliest demands for law made rates will be for the purpose of controlling the competition of the railway lines reaching the ports of New Orleans and Galveston. It will be claimed that too great an advantage is accorded these ports and that the relation in rates which has recently so increased the commerce of New Orleans ought to be modified in the interest of Boston and New York. Those of us who have followed the various differential investigations of recent decades know that this really means that those ports wish the hand of the law to step in and save them from the necessity of reducing their port charges. What chance, in such a contest, would New Orleans have before a deputy legislature appointed by a Republican President and constituted (let us say) like the present one, if the insidious force of sectional politics should be successfully introduced. Of the present Commission of five members one comes from New England, one from New York, one from the South, two from the Mississippi Valley. Of the three who make up its Republican majority, two are from New York and New England, one from Illinois. I do not say that these gentlemen have been moved by politics or sectional interests, but I do say that if they are made into a deputy legislature their successors soon will learn to act as partisans."

Continuing, the speaker said: "I have shown that reasonable rates can be enforced through the orderly judicial processes. Why do any of those who are not misled by the contrary opinion still insist that the defendants in a particular class of controversies shall be compelled to submit to the judgment of a tribunal differing in character and in methods of procedure from the judicial tribunals created under the Constitution and in conformity with the practice of all English-speaking peoples? Why do they still demand their deputy legislatures?"

"It is not necessary to go far in search of an answer. Courts enforce laws; legislatures enact political and social theories into laws. This distribution of governmental powers, established to guard the freedom of the governed, is a part of the evolution by which society has risen from despotism. The inquiry of the court is whether a law has been violated; the inquiry of a legislature is whether a new law shall be made. For the inquiry of the former there are prescribed rules of evidence, and formal but not necessarily elaborate or lengthy methods of procedure; the latter may investigate or not as its majority prefers, and if it investigates at all may hear testimony that would be rejected by a court, and need hear no more than it chooses. Those who still adhere to a demand for a deputy legislature want to enforce through it certain 'theories of progress' which Congress, the directly responsible legislature, is not inclined to enact, and which therefore are not enforceable by the courts."

ANXIOUS TO ABOLISH REBATES.

Western Railroad Representatives Confer With Interstate Commerce Commissioners.

Recently the representatives of leading Western roads had a conference with three members of the Interstate Commerce Commission concerning rebates. The spokesman of the carriers was J. C. Stubbs, vice president and traffic director of the Harriman lines. The railroad men who attended the conference were: G. T. Nicholson, vice president of the Atchison, Topeka & Santa Fé; H. R. McCullough, vice president of the Chicago & Northwestern; J. H. Hiland, vice president of the Chicago, Milwaukee & St. Paul; J. M. Johnson, assistant to the vice president of the Gould lines; J. F. Holden, freight traffic manager of the Rock Island; J. W. Blabon, freight traffic manager of the Chicago & Alton; Howard Morris, vice president and general counsel of the Wisconsin Central; C. L. Wellington, general traffic manager of the Colorado Southern; C. Hoile, traffic manager of the Missouri, Kansas & Texas; W. L. Martin, vice president of the Soo lines; J. C. Stubbs, vice president and traffic director of the Harriman lines; E. E. Smythe, general freight agent of the Kansas City Southern.

The members of the Commission present were Chairman Knapp and Commissioners Cockrell and Clements.

The conference, which lasted more than two hours, was secret, and all requests for information were referred to Chairman Knapp.

It is understood that the carriers stated that they were anxious to assist the Commission in the abolition of rebates and in inquiring into all grievances in connection therewith. It was suggested that the railways expressed a willingness to have a committee headed by a man unconnected with the railroads to act as a go-between in all conferences between the railway committee and the Commission.

HEARINGS AND RULINGS BY STATE COMMISSIONS.

Louisiana Rulings.

BATON ROUGE, La.—The Railroad Commission of Louisiana has ordered:

That Order No. 470, adopted November 10, 1905, authorizing the use of Western Classification No. 39 on lines west of the Mississippi River, except in so far as it might contain increases, is hereby revoked, and it is further,

That Western Classification No. 39 is authorized for use on lines west of the Mississippi River.

In the case of the Longbridge Cotton Oil Company vs. Texas & Pacific Railway Company, the Commission having under consideration the record case, and after full hearing and investigation, finding the rates on cottonseed and cottonseed products on the Texas & Pacific Railway in Louisiana to be excessively high as compared with the rates on other railways in Louisiana, and in other States, and, in some instances, discriminative and unjust to certain localities, and believing the best interests of the general public will be subserved by the establishment of a uniform mileage rate on the commodities named, it is therefore

Ordered, That the following rates be and are hereby established on cottonseed and cottonseed products, to be transported between points on the said railway in Louisiana.

Miles.	Cotton Seed, except Oil and Carloads, Min. Wt., 24,000 lbs.		Cotton Seed Products, except Oil and Tank Bottoms, Min. Wt., 24,000 lbs.		Oil and Tank Bottoms, Min. Wt., 30,000 lbs.	
	Min. Wt., 24,000 lbs.	Min. Wt., 24,000 lbs.	Min. Wt., 24,000 lbs.	Min. Wt., 24,000 lbs.	Min. Wt., 30,000 lbs.	Min. Wt., 30,000 lbs.
10 miles and less.....	3	3	3	3	4	4
20 miles and over 10.....	4	3.5	4	3.5	5	5
30 miles and over 20.....	4.5	3.75	4.5	3.75	6	6
40 miles and over 30.....	5	4	5	4	7	7
50 miles and over 40.....	6	4.25	6	4.25	7.5	7.5
60 miles and over 50.....	7	4.5	7	4.5	8	8
70 miles and over 60.....	7.5	4.75	7.5	4.75	8.5	8.5
80 miles and over 70.....	7.5	5	7.5	5	9	9
90 miles and over 80.....	8	5.25	8	5.25	9.5	9.5
100 miles and over 90.....	8.5	5.5	8.5	5.5	10	10
110 miles and over 100.....	9	5.75	9	5.75	10.5	10.5
120 miles and over 110.....	9	6	9	6	11	11
130 miles and over 120.....	9.5	6.25	9.5	6.25	11.5	11.5
140 miles and over 130.....	9.5	6.5	9.5	6.5	12	12
150 miles and over 140.....	10	6.75	10	6.75	12.5	12.5
160 miles and over 150.....	11	7	11	7	13	13
170 miles and over 160.....	12	7.25	12	7.25	13.5	13.5
180 miles and over 170.....	13	7.5	13	7.5	14	14
190 miles and over 180.....	14	7.75	14	7.75	14.5	14.5
200 miles and over 190.....	14.5	8	14.5	8	15	15
210 miles and over 200.....	15	8	15	8	15.5	15.5
225 miles and over 210.....	15	8	15	8	16	16
Over 225 miles.....	15	8	15	8	17	17

The rates proposed will be as follows:

On cottonseed, straight carloads.
On cottonseed cake and meal, straight or mixed carloads.

On cottonseed ashes, straight carloads.
On cottonseed hulls, straight carloads.

On cottonseed oil and tank bottoms, in barrels, straight or mixed carloads.

All rates previously in effect on cottonseed and cottonseed products between points on the Texas & Pacific Railway in Louisiana, are hereby cancelled.

The above rates on cottonseed will apply when 50 per cent. of the products of the seed are hauled in, other than linters, hulls and ashes, are shipped out via the Texas & Pacific Railway, otherwise the rates on cotton seed will be 3 cents per 100 pounds higher. This applies except on seed shipped into New Orleans or Gretna. Effective December 24, 1905.

Charles S. Elms vs. New Orleans Terminal Company. Petition for reduction of rates:

The Commission is asked by plaintiff in this case to reduce the rates now charged by the New Orleans Terminal Company for transporting freight between New Orleans and Port Chalmette, where it owns large terminal properties, and at Port Chalmette, and in transporting freight between New Orleans proper, and Port Chalmette, receives for the service 1 1/4 cents per 100 pounds. Plaintiffs asked that the rate of \$3 per car be fixed, declaring the same to be a fair and reasonable rate for the service performed.

After a careful consideration of the facts presented at the hearing, when there was no evidence introduced to show that the present charges are unreasonable or excessive, the Commission finds no reasonable grounds upon which it can order the reduction asked. There was a preponderance of evidence introduced to show that the company's revenue does not pay its just expenses. It is therefore ordered that the petition be and it is denied.

Philip Bodenheimer vs. Morgan's Louisiana & Texas Railroad & Steam-

for the storage of molasses and sugar be extended from forty-eight hours to five days, if granted would be unreasonable because it would still further add to the general shortage of cars by allowing consignees to hold cars for unloading, which ought to be returned promptly to the service for transporting freight, it is ordered that the petition be and it is denied.

Flashdick & Rixman Lumber Company, Ltd., vs. New Orleans, Natalbany & Natchez Railroad Company. Rates on Logs:

In this case the Commission is asked to fix a rate of \$4 per car for the transportation of logs between points on the New Orleans, Natalbany & Natchez Railroad.

At the hearing of the case it was conclusively shown by defendants that the revenues of the railroad for the year ending June 30, 1905, were not sufficient to meet the operating expenses and pay taxes and a reasonable interest on the investment. The rates complained of are not, in the opinion of the commission, unreasonable or excessive, in themselves, nor do they discriminate unjustly against the plaintiff, who is a manufacturer of lumber, hauling logs to Pontchatoula, over both the defendant company's road and the Illinois Central Railroad, which constitutes a joint haul. On the other hand, the commission believes that the rate of \$4 per car on logs, asked to be established by plaintiffs, would be unfair and unreasonable to the defendant railroad company, on account of its financial showing. It is therefore ordered that the petition be denied.

Cumberland Telephone & Telegraph Company, ex parte. Telephone Toll Rates:

The petition of plaintiffs asks that the commission authorize a standard system of charges for toll line service between points in Louisiana. The system proposed, briefly, is as follows:

Each parish is designated as a "square," and every parish site is taken as its centre or rate basing point. Toll rates between telephone stations in the same parish, or between stations in adjoining parishes are to be determined by actual measurements from station to station up to 20 miles. Toll rates between all stations in the same parish, and all stations in another parish not adjacent to or bordering on the parish in which the first station is located, are to be determined by the air line distance between the two parish sites or "square centres." Between points in the same parish, or between points in bordering parishes, the rates are to be based on the shortest toll line mileage, up to 20 miles. Where the distance between such stations exceeds 20 miles, then the air line schedule shall become effective.

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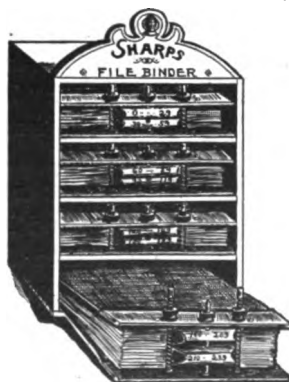
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The commission now has no systematic method of figuring or checking toll line rates, and believes the system proposed is a simple and satisfactory plan, easily understood by the public and the employees of the company, and that its adoption will result in more uniform charges than exist at present. The changes which will result in present toll line rates are small, and while there will be some slight increases there will be as many or more reductions to offset them.

Believing the adoption of the "square" rate system for figuring toll rates will be of benefit to the public, it is ordered that:

1. For rates for long distance telephone conversations of three minutes' duration or less, from 1 mile to 20 miles, measurements will be made according to pole line mileage, and the rates will be as follows:

From 1 to 7 miles, inclusive.....	10 cents
Over 7 to 15 miles, inclusive.....	15 cents
Over 15 to 20 miles, inclusive.....	20 cents

2. For rates for long distance telephone conversations of three minutes' duration or less, between points in the same parish or adjoining parishes, over 20 miles pole line mileage apart, the measurements shall be made according to the air line distance between stations. In all towns or cities where there are telephone exchanges, said exchanges shall be considered stations.

3. For rates for long distance conversations of three minutes' duration or less, between points in any parish to points in any other parish not bounding same, measurements shall be made according to air line distance from parish site to parish site.

Rates based upon air line measurements shall be computed as follows:

1 mile to 40 miles, inclusive.....	25 cents
Over 40 miles to 50 miles, inclusive.....	30 cents
Over 50 miles to 60 miles, inclusive.....	35 cents
Over 60 miles to 70 miles, inclusive.....	40 cents
Over 70 miles to 80 miles, inclusive.....	45 cents
Over 80 miles to 100 miles, inclusive.....	50 cents
Over 100 miles to 110 miles, inclusive.....	55 cents

From 100 miles and over the rate is one-half cent per mile, air line measurement; the rate increasing 5 cents for every 10 miles or fraction thereof. For example:

If the distance is 102 miles, the rate is 55 cents.

For conversations longer than three minutes, the charges for each extra minute shall not exceed one-third of the three minute rate.

4. Stations located in the extreme southern part of Plaquemine Parish, on what is known as the Port Eads Line, will continue to use rates already authorized. For convenience's sake, these stations will each be given a square number, and the rates quoted to all other stations are to be in conformity with the rates between these stations and New Orleans, La.

5. Night conversation rates are in effect from 6 p. m. to 6 a. m.

Where the day rate is 10 cents the night rate will be 10 cents

Where the day rate is 15 cents the night rate will be 15 cents.

Where the day rate is 20 cents the night rate will be 20 cents.

Where the day rate is 25 cents the night rate will be 20 cents.

Where the day rate is 30 cents the night rate will be 20 cents.

Where the day rate is 35 cents the night rate will be 20 cents.

Where the day rate is 40 cents the night rate will be 20 cents.

Where the day rate is 45 cents the night rate will be 25 cents.

Where the day rate is 50 cents the night rate will be 25 cents.

Where the day rate is 55 cents the night rate will be 30 cents.

Where the day rate is 60 cents the night rate will be 30 cents.

When the day rate is 50 cents or more, the night rate is one-half that day rate.

When the half rate does not end in 0 or 5, the amount is carried up to the next 0 or 5.

For example: When the day rate is 55 cents, the night rate is 30 cents.

6. Sunday rates are the same as night rates.

7. The official map of the Railroad Commission of Louisiana is to be used as the standard map for measuring distances between square centres, and all calculations for rates shall be based upon the commission's map.

8. All rates or orders in conflict with the rates named in this order will be revoked when this order becomes effective.

Rulings of Texas Board.

AUSTIN, Tex.—The Railroad Commission of Texas issues the following:

In approval of applications numbers 374 and 375 of the Gulf, Colorado & Santa Fé Railway Company, it is hereby ordered that Commodity Tariff No. 34, issued by this commission to apply on lumber and articles taking lumber rates, in carloads, transported by railroads between points in Texas and effective May 24, 1901, be amended by adding thereto the following items:

Effective December 26, 1905, and expiring April 1, 1906. Rate on ties and bridge material, account Trinity & Brazos Valley Railway Company, from stations on the Gulf, Colorado & Santa

Fé Railway, Beaumont Division east of Silsbee, to Bobbin, shall be ten (10) cents per 100 pounds.

Effective December 27, 1905. Rate on lumber and articles taking lumber rates, in carloads, from mills on the St. Louis Southwestern Railway of Texas to points on the Gulf, Colorado & Santa Fé Railway, Sealy to Matagorda, inclusive (old Cane Belt Railway), shall be 18½ cents per 100 pounds, except where lower rates may now be in force from Lufkin and Huntington to such points.

In approval of joint application, submitted under No. 373 of the Gulf, Colorado & Santa Fé Railway Company, it is hereby ordered that Commodity Tar-

iff No. 1-E, issued by this commission to apply on cotton and cotton linters in bales, transported by railroads between points in Texas and effective June 1, 1905, be amended by canceling Exception No. 52, Section 3 of tariff, and substituting therefor the following:

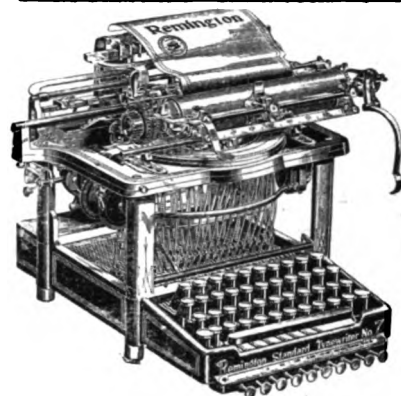
52. The Gulf, Colorado & Santa Fé Railway Company is authorized to operate jointly with the International & Great Northern Railroad Company or the Missouri, Kansas & Texas Railway Company of Texas, in the adjustment of charges for concentrating, at Austin, cotton from Lamasas.

This order shall take effect December 27, 1905.

In approval of application No. 806 of the Missouri, Kansas & Texas Railway

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Company of Texas, it is hereby ordered that Commodity Tariff No. 8-A, issued by this commission to apply on live stock, in carloads, transported by railroads between points in Texas and effective March 10, 1899, be amended by adding to Section 5 thereof the following item:

25. Missouri, Kansas & Texas Railway of Texas.—Cattle, in carloads from stations on the Missouri, Kansas & Texas Railway of Texas, when intended for export, may be stopped at points between Houston and Virginia Point at a charge of \$2.50 per car for the stop in addition to the through rate from point of origin to destination.

This order shall take effect December 18, 1905, canceling Circular No. 2384, issued December 14, 1905.

The Railroad Commission of Texas having been informed that some shippers are practicing an abuse of the rules contained in Circular No. 1548, for changing destination of carload shipments in transit or at first destination by having the shipments billed to themselves or some re-consigning agent at a point between origin and the real or final destinations of the shipments, such intermediate point being on a line of railroad which extends to consignee's place of storage or unloading at final destination, so that switching charges at such final destination may be avoided, the commission hereby rules and so orders that such practice is an abuse of the privileges accorded by said Circular No. 1548, and that in cases where such practice or abuse occurs, the through rate to be collected on the shipment shall be the combination of the regular tariff rates applying from origin to such intermediate point and from such point to final destination.

In approval of application No. 376 of the Texas & Pacific Railway Company, and No. 208 of the Texas & New Orleans Railroad Company, it is hereby ordered that Commodity Tariff No. 30-A, issued by this commission to apply on fence posts, logs, poles, etc., transported by railroads between points in Texas and effective March 10, 1899, be amended as follows:

1. Cancel Exception No. 3, Section 2 of tariff, and substitute therefor the following:

3. Texas & Pacific Railway.—Rate of \$15 per car for the transportation of logs, quartered logs (other than pine or cypress) and stave bolts, for manufacturing purposes, mining timbers and caps, in carloads, from all stations, Marshall to Mineola, both inclusive, to Strawn; also rate of \$10 per car for the transportation of bois d'arc logs and timber from Forney to Dallas for manufacturing purposes, rates from and to intermediate points not to be higher; the above rates to apply only on shipments loaded in coal cars, cars not to be loaded in excess of their marked capacity.

2. Add to Exception 18, Section 1 of tariff, the following item:

(i) Pine logs, in carloads, minimum weight 40,000 pounds per car, from Village and intermediate points to Woodville, 1½ cents per 100 pounds. When one carload of lumber, produced from logs transported at the rate above authorized, is delivered to the railroad company for shipment to final destination, the railroad company shall take up and refund the amount of the expense bills for the transportation of three carloads of such logs; provided that the

amount so refunded shall not exceed the revenue on the one car of lumber.

Item 1 shall take effect December 27, 1905.

Item 2 shall take effect January 1, 1906, and expire June 30, 1906.

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PERSONAL MENTION.

AKERS.—Matt L. Akers, heretofore superintendent of the Big Four and C. & O. freight terminals in Louisville, Ky., has been appointed division freight agent of the C. & O., with offices in that city.

BLAKELY.—W. W. Blakely has been appointed Southern freight agent in Memphis, Tenn. Heretofore he has been commercial freight agent of the Baltimore & Ohio Southwestern in Louisville, Ky.

COX.—J. L. Cox, heretofore commercial agent of the Southern Railway, in Columbus, Miss., has been appointed division freight agent with offices at that point.

DEXTER.—C. H. Dexter has been appointed contracting freight agent of the Oregon Railroad & Navigation Company in Portland, Ore.

FEE.—T. H. Fee has been appointed freight traffic agent of the Western Maryland in Baltimore, Md.

HOOVER.—Edgar M. Hoover has been appointed assistant traffic manager of the Pacific & Idaho Northern in Boise, Idaho.

HOSBURY.—Robert Hosbury has resigned as traffic manager in the Cleveland Stock Yards to accept the position of traffic manager of the Pittsburg Union Stock Yards Company.

KEMP.—E. L. Kemp has been transferred to Louisville, Ky., as traveling freight agent of the Illinois Central.

LEMMON.—H. S. Lemmon is the west-bound freight agent of the Asheville line in Memphis, Tenn.

McKELLAR.—D. W. McKellar has been appointed soliciting freight agent for Southern Railway in Memphis, Tenn.

MITCHELL.—Chas. C. Mitchell is the new contracting freight agent of the Oregon Railroad & Navigation Company in Spokane, Wash.

PRICKMAN.—W. E. Prickman, heretofore freight agent of the Wheeling & Lake Erie, in Toledo, Ohio, has been appointed to the same position on the Wabash in Pittsburg.

RADLEY.—H. P. Radley, general freight and passenger agent of the Southern Indiana, has been removed from Terre Haute, Ind., to the Grand Central Station, Chicago, Ill.

REYNOLDS.—W. H. Reynolds is the new division freight agent in Cumberland, Md.

ROBINSON.—James Robinson has been promoted to the position of division freight agent of the Great Northern, with offices in Grand Forks, N. Dak.

SEVERNS.—W. V. Severns has been appointed traveling freight agent in Chicago for the St. Louis & San Francisco.

SHERWOOD.—E. M. Sherwood, heretofore traveling freight agent of Illinois Central in Jackson, Tenn., has been appointed freight agent in Evansville, Ind.

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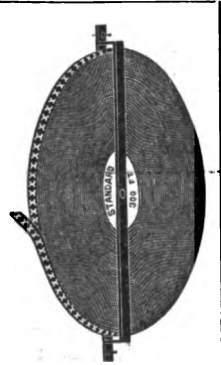
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NEWS OF THE STATES.

GEORGIA.

AUGUSTA.—The Southern Transportation Company has announced a new and lower schedule of rates on the Savannah River boats. This is the end of a long fight waged by cotton mill interests of this city, which resulted in a case being brought for alleged overcharges in Judge Emery Spear's court. These lower rates will prove of great benefit to shippers by the water route.

NEW YORK.

ROCHESTER.—By an agreement between the Trunk Line Classification Commission and the transportation committee of the Eastern Nurserymen's Association a reduction of 15 per cent. has been obtained on freight rates on nursery stock shipped in less than carload lots. The Trunk Line Classification Commission's jurisdiction extends from Mississippi River eastward and from the Potomac River northward.

BUFFALO.—The East Buffalo Live Stock Association has adopted a memorial which goes on record as in hearty sympathy with President Roosevelt's recommendation for proposed legislation to govern railroad rates. Members say that the live stock business suffers by discrimination to the extent of from \$5 to \$15 per carload. Copies of the memorial have been sent to Senators Platt and Depew and to Representatives Ryan and Alexander, with the request that they do all in their power to further the enactment of rate legislation.

BUFFALO.—The freight department of the Pennsylvania Railroad has issued a set of directories for pocket use, containing the names and addresses of all hay shippers, grain, flour and feed dealers, elevators and warehouses and oyster shippers located along its system. They contain a fund of information for persons doing business with the interests named.

OREGON.

PORTLAND.—The North Pacific steamship lines have decided to maintain the rate of \$4 a ton on flour from North Pacific points to Japanese ports after January 1. A month ago a rate of \$4.50 for the first part of 1906 was announced, but the shippers chartered an independent steamship at \$4 to ply on Puget Sound and threatened to engage more to carry at the same rate. Hence the sudden change of heart on the part of the old steamship line. The tariff to Hong Kong and Manila of \$4.50 and to Shanghai of \$5 will remain in force.

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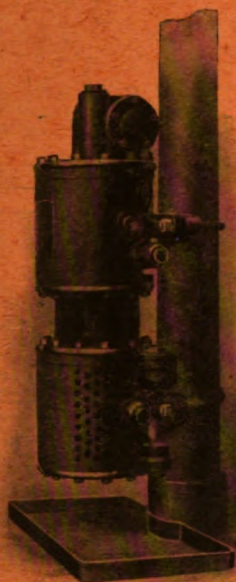
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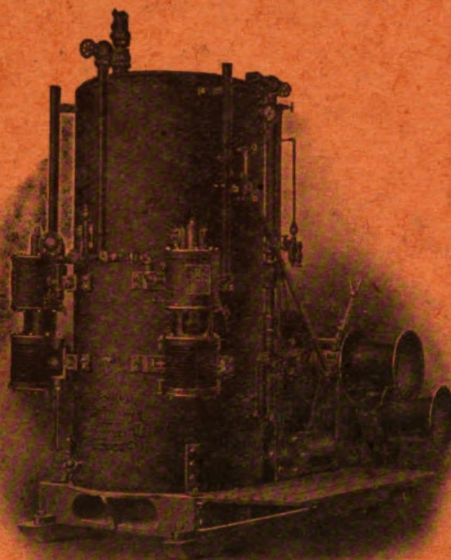
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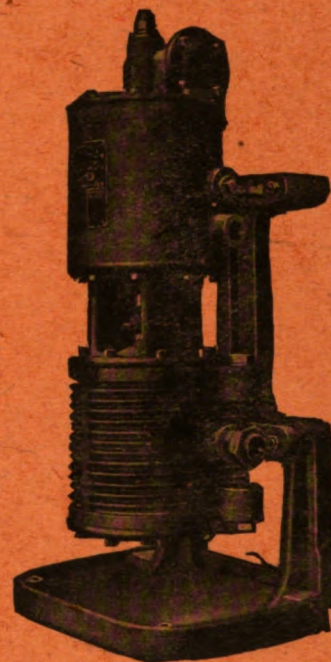
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FREIGHT THE SHIPPERS' FORUM

Vol V, No. 2.

NEW YORK, FEBRUARY, 1906.

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TEXT OF HON. H. M. HOGG'S RAILROAD RATE BILL.

Based on the Plan Suggested by Judge Peter S. Grosscup and Introduced in the House of Representatives, January 4, 1906.

BELOW is the text of the railroad rate bill introduced in the House of Representatives on January 4, 1906, by Hon. H. M. Hogg, of Colorado. The bill is based on the plan suggested by Judge Peter S. Grosscup, of the United States Circuit Court of Appeals, and advocated by FREIGHT. It was referred to the Committee on Interstate and Foreign Commerce:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the heretofore existing Interstate Commerce Commission is abolished, and a transportation commission is hereby created and established, to be known as the Transportation Commission, which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. The commissioners of transportation under this act shall continue in office for a term of two, three and four years, respectively, from the first day of July, 1906, the term of each to be designated by the President at the time of appointment. And their successors shall be appointed for a term of four years, except that no person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than two of the commissioners shall be appointed from the same political party. Each commissioner shall receive a salary of \$10,000 per annum, payable in the same manner as judges of the courts of the United States. No person owning stocks or bonds of any carrier subject to the provisions of this act, or subject to the act entitled "An act to regulate commerce," approved February 4, 1887, or who is in any manner pecuniarily interested therein shall enter upon the duties of such office, or at any time hold the same. Said commissioners shall not engage in other business, vocation or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. All laws and parts of laws conferring power and imposing duties or otherwise relating to the heretofore existing Interstate Commerce Commission, shall continue in full force and effect, and shall be applicable to the transportation commission established by this act, except as herein otherwise provided.

SEC. 2. That in addition to the powers hereby conferred on the transportation commission, it is hereby authorized and directed to employ from time to time such experts in transportation and such counsel or other suitable persons as may be necessary for the purpose of carrying out and enforcing the provisions of this act, and it is hereby authorized to ap-

point, from time to time, such expert bookkeepers and accountants or other suitable persons, as may be necessary for the purpose of thoroughly examining, under its direction, the books, records and transactions of the common carriers engaged in interstate commerce with respect to all matters pertaining to the transportation of such commerce. Persons so appointed shall be, and they are hereby, vested with full power to examine, under oath, any or all of the officers and agents of such carriers, touching such interstate commerce transportation, and they shall make a full detailed report of such examination to the transportation commission, in such form and at such times as it may prescribe, and all carriers so engaged in interstate commerce are hereby required to permit such examination of their books, records, officers and employes and of other things necessary and proper to facilitate such examination.

Any person who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$5,000 or imprisonment for a term not exceeding two years, or both.

The transportation commission may in its discretion prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. The commission or its authorized agents shall at all times have access to all accounts, records and memoranda kept by the carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records or memoranda than those prescribed or approved by the commission. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver or trustee to keep such account, records and memoranda on the books and in the manner prescribed by the commission, or to submit such accounts, records and memoranda as are kept to the inspection of the commission or any of its authorized agents or examiners, such carrier, receiver or trustee shall forfeit to the United States the sum of \$500 for each such offense, the forfeitures to be recovered in the same manner as other forfeitures provided for in this act.

Any persons who shall willfully make any false entry in the accounts of any book of accounts, or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter or by other means or device falsify the record of any such account, record or memoranda, or who shall willfully neglect or fail to make full, true and correct entries in

such accounts, records or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records or memoranda than those prescribed or approved by the commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

SEC. 3. That the provisions of the act of Congress regulating commerce, approved February 4, 1887, and the several acts amendatory thereof and supplementary thereto, are hereby, so far as applicable, made to apply to any person or persons, copartnership or corporation engaged in furnishing, supplying, leasing, licensing or renting for hire cars, facilities or instrumentalities of commerce used for and in connection with the transportation of property for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to any adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also transporting in like manner property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or adjacent foreign country.

SEC. 4. That every owner or operator of freight cars used in interstate commerce shall report under oath to the transportation commission annually in each year hereafter, which said report shall show the number of cars operated by the person or persons, firm or corporation so owning or operating said cars and over what lines of railroad the same are operated, the amount of mileage of all the cars so operated, the rate of mileage or per diem paid by each railroad over the period covered by said report. Such reports shall also show the names of the owners and operators of said cars, and, if a corporation, the stockholders of such corporation.

SEC. 5. That it shall be the duty of every railroad operating private cars or cars not owned by it or other railroad companies to file with the transportation commission, at the same time and in the same manner in which other tariff schedules are by said act above mentioned required to be filed, a schedule of mileage or per diem rates charged and paid for the use, operation and hauling of such cars.

SEC. 6. That it shall be unlawful for any railroad company within the borders of the United States to charge or pay any other than a fair, just and reasonable rate or compensation for, or with respect to, or in connection with the hauling, use or operation of such private cars, or to charge or pay rates or compensation other than that specified in the schedule so filed.

SEC. 7. That it shall be unlawful for any common carrier engaged in the operation of cars, as herein described, to solicit, accept or receive any concession or enter into any agreement or device or practice any discrimination with respect to the operation of such cars, as hereinbefore described, whereby such cars shall, by any such concession, discrimination, agreement or device, be transported at a rate of mileage or compensation other than that named in the mileage or compensation schedule required to be filed with the transportation commission as hereinbefore provided, or whereby through such concession, discrimination or agreement or device any advantage is given or gained by any shipper using its cars or discrimination practiced against any shippers using cars, the property of any railroad company, for the transportation of freight.

SEC. 8. That whenever the transportation commission shall have reasonable ground for belief that any common car-

rier engaged in the interstate carriage of passengers or traffic between given points is violating the law relating to common carriers, or is transporting passengers or property at less than the published rates on file, or is, either singly or in cooperation with one or more other carriers, publishing and charging unjust or unreasonable rates therefor, or is committing any discrimination forbidden by law, whether as between shippers, places, commodities or otherwise, and whether effected by means of rates, rebates, classifications, preferentials, private cars, refrigerator cars, switching or terminal rates or charges, elevator rates or charges, heating, refrigerating or ventilating charges, failure to supply shippers equitably with cars, or failure to transport cars, or in any manner whatsoever, it shall be authorized to file in the name of the United States a petition subscribed by one of said commissioners alleging such facts in the court of transportation hereinafter created, whereupon it shall be the duty of said court summarily to inquire into the facts and circumstances upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits, except such as it may prescribe, and to make such other persons or corporations parties thereto as the court may deem necessary; and, upon being satisfied of the truth of the allegations of said petition, said court is empowered to enjoin or otherwise prevent, according to the ground of any complaint, any or all such methods, practices or devices, or the publishing, charging and exacting of any rate or rates so complained of in excess of what the court shall find to be reasonable and just, such injunction or other process to continue in force during such period as the court of transportation may determine; or said court of transportation shall enforce an observance of the published tariffs if they are found to be just and reasonable, or direct and require a discontinuance of such discriminations, by such proper orders, writs and process as will, as nearly as may be, secure equality of right and treatment to all parties interested, which said orders, writs and process may be enforceable as well against the parties interested in the traffic as against the carrier or carriers complained of. The proceedings provided for by this act shall be prosecuted at the cost of the United States or the common carriers as the court may adjudge equitable and just, and such proceedings shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said "Act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto. And in proceedings under the "Act to regulate commerce" the said courts shall have the power to compel the attendance of witnesses, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper or shippers, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence or information, documentary or otherwise, in the proceeding, provided that the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February 4, 1887," or any other acts having a like purpose that may be hereafter enacted, shall apply to any case prosecuted by the transportation commission in the name of the United States.

SEC. 9. That there is hereby created a court, to be known as the Court of Transportation, which shall consist of one

chief justice and six associate justices, four of whom shall constitute a quorum. Said court shall be a court of record with jurisdiction as hereinafter defined. Of the judges of said court the chief justice and two associate justices shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their offices during good behavior, and four of whom shall be designated by the President from among the judges of the existing circuit courts of the United States for a period of three years. And no one owning stocks or bonds of any carrier subject to the provisions of this act or to an act entitled "An act to regulate commerce," approved February 4, 1887, or who is in any manner pecuniarily interested therein, shall be eligible to sit as a judge of said court of transportation. The salary of the chief justice shall be \$10,500 per year and of each associate judge shall be \$10,000 per year, payable in the same manner as salaries of judges of other courts of the United States. The provisions of section 714 of the Revised Statutes of the United States relating to the retirement of judges of the United States courts shall apply to the judges of the court of transportation. Such court shall prescribe the form and style of its seal and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction. The court shall appoint a clerk, who shall perform and exercise the same duties and powers in regard to all matters within its jurisdiction as are now exercised and performed by the clerk and reporter of the Supreme Court of the United States so far as the same may be applicable. The salary of the clerk of the court shall be \$5,000 a year, payable in the same manner as the salaries of the judges of said court. The court shall have power to issue such writs and process, legal and equitable, and to establish such rules and regulations as may be necessary for the conduct of the business in its jurisdiction. The court shall have authority to appoint and fix the compensation of deputy clerks or attendants as it may find necessary to the proper performance of its duties. The salaries of the officers and all the expenses of the court, including all necessary expense for transportation incurred by the judges of the court, or by the marshal or clerk or any deputy clerk or attendant of the court, upon official business in any other place than in the city of Washington, shall be allowed and paid out of the appropriation for salaries and expenses of the courts of the United States upon presentation of itemized vouchers therefor. The court shall be furnished by the Attorney General of the United States with suitable offices and all necessary office supplies.

SEC. 10. That the said court of transportation shall have exclusive and plenary jurisdiction in law and equity in all civil proceedings brought by the transportation commission for and in the name of the United States, based upon a violation of the act to regulate commerce, approved February 4, 1887, and acts supplementary thereto and amendatory thereof, disobedience of any order, writ or other process of said court or of one of the judges thereof shall constitute contempt of said court, punishable by a fine payable into the Treasury of the United States of \$5,000 for each offense or by imprisonment for not more than one year, or both fine and imprisonment. Every distinct violation of such order, writ or other process of said court or judge thereof shall be a separate offense, and each day of the continuance of the violation shall be deemed a separate offense.

Any four of the judges of the court of transportation may hold a general term and any one of them may hold a special term.

Four of the judges, sitting in general term, shall constitute a quorum for the transaction of business, but when the four judges are equally divided in opinion the same shall be noted upon the minutes of the court, and thereupon and within four days thereafter each party in such cause may file with the clerk of the court a motion in writing to have such cause reargued before five or more judges.

But no judge shall sit in general term to hear an appeal from any judgment or decree or order which he may have rendered at the special term.

The court of transportation in general term shall have power by rule of court to regulate the period of holding its terms, as also the periods and places of holding of all the special terms and to fix such terms and to alter the same from time to time as public convenience may require.

The general terms of said court of transportation shall be held at Washington, and at least three general terms of said court shall be held annually.

The special terms shall be held by one of the judges of the court of transportation at such time and place as the court in general term shall appoint.

Any party aggrieved by any order, judgment or decree, made or pronounced at any special term of said court, may, if the same involve the merits of the action or proceeding, appeal therefrom to the general term of said court, and upon such appeal the general term shall review such order, judgment or decree, and affirm, reverse or modify the same as shall be just; said appeal to be taken within such time and in such manner and by such procedure as the said court of transportation may, by rules and regulations, prescribe.

SEC. 11. That the judgment, orders and decrees of said court of transportation in general term shall be final, excepting that the said court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires instructions of that court for its proper decision. And thereupon the Supreme Court may either give its instructions on the questions and propositions certified to it, which shall be binding upon the court of transportation, or may require that the whole record and case be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal. And excepting, also, that it shall be competent for the Supreme Court to require, by certiorari or otherwise, in such case to be certified to the Supreme Court for its review and determination with the same authority and power in the case as if it had been carried by writ of error to the Supreme Court.

During the pendency of the decision of the Supreme Court of the United States in any such case neither the order of said court of transportation nor the execution of any writ or process shall be stayed or suspended.

SEC. 12. That at special terms of the said court of transportation the marshals of the several circuit courts of the United States in and for the district where the special terms may be held shall be ex-officio marshals of said court, and the several clerks of the circuit courts of the United States in and for the district where the said special terms may be held shall be ex-officio clerks of said court, and said officials are hereby vested with the power to perform the duties usually performed by such officials.

SEC. 13. That the court of transportation in general or special term shall have power to summon and bring before it all parties named as defendants or respondents in proceedings before it in whatever judicial district, Territory or possession of the United States where they may reside, and subpoenas for witnesses to appear before the court of transportation may run into any judicial district or Territory or possession of the United States.

SEC. 14. That the court of transportation, when a court of equity, shall be deemed always open for the purpose of filing any complaint, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules and other proceedings, including temporary restraining orders, preparatory to the hearing upon their merits of all causes pending therein, and any justice of the court of transportation may, upon reasonable notice to the parties, make and direct and award at the chambers, and in

vacation as well as in term, all such process, commission, orders, rules and other proceedings, including temporary restraining orders, whenever the same are grantable, as, of course, according to the rules and practice of the court.

SEC. 15. That the costs and fees in the court of transportation shall be provided by law for the courts of the United States, and shall be expended, accounted for and paid over to the Treasurer of the United States in the same manner as is now provided in respect of the costs and fees in the several circuit courts.

SEC. 16. That the court of transportation shall have jurisdiction upon application of the transportation commission, alleging a failure to comply with or a violation of any of the provisions of said act to regulate commerce or any act supplementary thereto or amendatory thereof, by any common carrier, to issue a writ or writs of mandamus commanding such carrier to comply with the provisions of said acts or any of them.

SEC. 17. That when the court of transportation shall hold a general term in the city of Washington the marshal of the United States for the District of Columbia shall attend the sessions and shall execute the orders and processes of the said court.

SEC. 18. That every person or corporation who shall willfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than \$1,000 or more than \$20,000. Every violation of this act or the act to regulate commerce shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted, and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined or punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

SEC. 19. That the forfeitures provided by this act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the carrier has its principal office or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecutions shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 20. That all acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 21. That this act shall take effect on the first day of July, 1906.

Mr. Hogg Presents a Memorial to Congress.

On January 22 Representative Hogg presented to the House a memorial, signed by several thousand business firms, urging the passage of H. R. 10098, to amend the Interstate Commerce Act. The bill is one introduced by Mr. Hogg and is the Grosscup plan for the amendment of the act. The signers of the memorial are from every State in the Union, and their capital aggregates nearly two and one-half billions of dollars and the amount of annual business transacted by them is considerably over five billions. The capital of the signers in Colorado is \$6,611,384 and the annual business transacted by them \$10,365,120.

GROSSCUP PLAN INDORSEMENTS

Statement Showing Capital and Annual Business of the Men Who Want the Hogg Bill Enacted Into Law.

Here is a statement showing by States the capital and amount of annual business of indorsers of the Grosscup plan for the amendment of the Interstate Commerce Act. The plan is contained in the bill introduced by Hon. H. M. Hogg, of Colorado, January 4, 1906. These figures were compiled from information obtained direct from individual indorsers of the Grosscup plan, and include all indorsements up to and including November 27, 1905:

State.	Capital Invested.	Annual Business.
Arkansas	\$6,599,839	\$25,599,144
Alabama [Georgia]	36,382,472	81,782,088
California	72,480,000	134,903,520
Colorado	6,611,384	10,365,120
Connecticut	17,794,341	39,058,059
Florida	10,236,057	23,732,943
Idaho	3,304,000	5,980,800
Illinois	443,533,383	1,467,848,624
Indiana	50,929,536	99,191,232
Iowa	14,878,143	29,699,713
Kansas	7,834,433	26,586,183
Kentucky [Tennessee]	70,822,195	191,371,235
Louisiana [Mississippi]	39,522,108	115,056,978
Maine [New Hampshire [Vermont]	26,600,640	44,721,600
Maryland [Delaware]	31,653,441	62,245,059
Massachusetts	91,733,450	229,774,524
Michigan	146,043,455	208,567,540
Minnesota	22,705,179	54,159,063
Missouri	255,832,800	477,872,400
Montana	2,351,250	3,704,250
Nebraska [Nevada]	7,351,435	12,975,569
New Jersey	26,434,544	53,691,936
New York	256,225,625	559,709,379
North Carolina [South Carolina] ..	46,180,717	65,732,608
North Dakota [South Dakota]	2,059,144	15,888,750
Ohio	289,435,397	481,597,279
Oklahoma [Indian Territory]	9,747,500	40,833,333
Oregon	9,392,746	22,263,418
Pennsylvania	191,004,406	443,678,677
Rhode Island	20,754,195	37,052,605
Texas	28,039,455	65,017,275
Utah [Arizona]	1,824,000	3,776,000
Virginia	27,543,312	73,554,852
Washington	16,568,253	37,872,198
West Virginia	26,921,644	47,554,768
Wisconsin	35,601,414	78,062,476
Wyoming	168,000	387,333
District of Columbia	5,166,666	8,433,333
Total	\$2,358,266,559	\$5,380,301,864

Advance in Rates on Dried Fruits.

The railroads interested in the transcontinental transportation of dried fruits have given notice of an advance in the minimum weights on that commodity. The proposal does not please the shippers, but is spoken of with favor by the New York merchants. That the advance will prove a discrimination against the smaller dealer is not denied, but the larger merchants are in favor of the advance.

DIGEST OF H. R. 10,098.

(To amend the Act to Regulate Commerce.)

Introduced in the House of Representatives on January 4, 1906, by Representative H. M. Hogg, of Colorado, and referred to the Committee on Interstate and Foreign Commerce.

Sec. 1. A Transportation Commission of three members is created in lieu of the existing Interstate Commerce Commission; members appointed by the President, each serving terms of four years; salary, \$10,000 per year; no one having railroad securities or pecuniarily interested in carriers eligible to be commissioners. The Transportation Commission has conferred upon it all the powers and duties of the present Commission.

Sec. 2. The Transportation Commission is authorized to employ experts, counsel, bookkeepers and examiners to assist in the enforcement of the act and to examine railroad accounts. The examiners have authority to examine under oath officers of corporations, and carriers must submit books and accounts for examination. Penalty for divulging information without direction of Commission or court, \$5,000.

The Transportation Commission may prescribe what accounts shall be kept by carriers, and in what manner. Penalty for failure to keep accounts as required, or keeping other accounts, \$5,000. Penalty for making false entries in accounts, \$5,000, or imprisonment, or both.

Sec. 3. Act to Regulate Commerce made applicable to any person or persons furnishing, supplying, leasing, licensing, or renting for hire cars, facilities or instrumentalities of commerce and interstate transportation.

Sec. 4. Owners and operators of freight cars used in interstate commerce shall make annual reports showing number of cars operated, over what lines of railroad, rate of mileage, or per diem; also names of owners and operators, including stockholders, if a corporation.

Sec. 5. Carriers operating private cars shall file with the Transportation Commission a tariff schedule of mileage or per diem charged and paid for the use of such cars.

Sec. 6. For a railroad to charge or pay any other than a fair, just and reasonable rate of compensation for private cars, or to charge or pay other than specified in schedule, is declared to be unlawful.

Sec. 7. It is declared to be unlawful to solicit, accept or receive any concession in any way in respect to private cars.

Sec. 8. If the Transportation Commission have reasonable ground for belief that a carrier is violating the law relating to common carriers, or is departing from the published rate, or is committing any discrimination forbidden by law, however effected, or is failing to supply shipper equitably with cars, or failing to transport cars, or in any manner whatsoever, it is authorized to file in the name of the United States a petition alleging the facts in the Court of Transportation provided for by this act. It is the duty of the Court of Transportation summarily to inquire into the facts and circumstances without formal proceedings, except such as the court may prescribe, and if the court be satisfied of the truth of the statements of the bill it is empowered to enjoin or otherwise prevent any or all of such methods and practices or devices, or unreasonable and unjust rates, or enforce an observance

of published tariffs, or require a discontinuance of discrimination by such process as the court may deem proper. The court may assess costs of the proceeding against the United States or the common carrier, as it may adjudge equitable. Proceedings before the Court of Transportation do not preclude the bringing of suits for damages by an injured party. Witnesses before the court are required to testify, notwithstanding the claim be made that the testimony may tend to criminate witness.

Sec. 9. The Court of Transportation consists of seven judges, of whom four is a quorum; is a court of record. Three of the judges are to be appointed by the President and four are to be designated from the judges of the existing Circuit Courts; salary of the chief justice, \$10,500 per year; each associate judge, \$10,000. Persons owning railroad securities are not eligible to sit as judges of this court. Provision is made for the clerk, deputy clerks and marshals of the court. The court has power to issue such writs and process, legal and equitable, as may be necessary for the conduct of the business in its jurisdiction.

Sec. 10. The Court of Transportation has exclusive and plenary jurisdiction in law and equity in civil proceedings brought by the Transportation Commission for violation of the Act to Regulate Commerce and the amending acts. Provision is made for contempt.

The general term of the court consists of at least four judges, while one judge may hold a special term. Judges sitting in special term cannot sit in general term to review cases heard below by them. From the decision of a judge in special term an appeal may be taken by the aggrieved party to the court in general term.

Sec. 11. The judgments, orders and decrees of the court in general term are final, except the court may certify propositions of law to the Supreme Court for its determination. Pending an appeal to the Supreme Court, the decision of the Court of Transportation shall not be stayed or suspended.

Sec. 12. Provision is made for marshals and clerks and for the special term.

Sec. 13. The Court of Transportation can summon defendants and witnesses from any part of the United States.

Sec. 14. The Court of Transportation, when a court of equity, shall always be open for the purpose of filing complaints and issuing process and making interlocutory orders.

Sec. 15. Costs and fees of the court shall be the same as the courts of the United States and accounted for as now provided for the several Circuit Courts.

Sec. 16. The Court of Transportation shall have power to issue writs of mandamus, commanding a carrier to obey the Interstate Commerce and amending acts.

Sec. 17. The general terms of the Court of Transportation shall be held at Washington.

Sec. 18. Any person or corporation violating the provisions of the act shall be guilty of misdemeanor; penalty, fine of from \$1,000 to \$20,000. Violation to be prosecuted in any court of the United States having jurisdiction of crimes.

Sec. 19. Forfeitures under the act to be recoverable in the courts of the United States and to be prosecuted under direction of the Attorney General.

Sec. 20. Inconsistent acts repealed.

Sec. 21. Act effective July 1, 1906.

GOVERNMENT REGULATION OF FREIGHT RATES.

No State in the Union in Which There Are Not Hundreds of Misfits in the Rate—The "New Era of Competition."

BY BALTHASAR HENRY MEYER,

Professor of Political Economy in the University of Wisconsin and Member of the Railroad Commission of Wisconsin.

(An Address delivered before the American Economic Association.)

THE present practical importance of the question of government regulation of railway rates in the United States suggests that this paper assume somewhat the character of an argument.

The first paper on transportation subjects which I ever submitted for publication contained a somewhat detailed comparison between railways and ordinary business enterprises. One of the editors informed me that the comparison was really unnecessary, because the readers of this magazine generally understood that a railway was quite different in its nature from a soap factory; and that the formation of railway rates differed from the formation of prices for ordinary commodities. Consequently, I eliminated nearly the whole of the comparison. That was nearly ten years ago. For members of the American Economic Association such a comparison is not necessary to-day, and I shall not make it; but I do wish to say that in current discussions it is frequently asserted that railway enterprise is like every other business enterprise, and that no more legislation is needed for a railway than for a soap factory. This paper assumes that the railway differs in many of its most vital aspects from other commercial enterprises, and that upon these differences, well understood by nearly every member of this association, but not by many outside of the association, rests the necessity of more far-reaching restrictive legislation.

The right of the State to regulate the public use of private property has stood unchallenged for more than a quarter century. Differences of opinion arise in the attempt to specify the exact extent of the public use and the consequent degree of public control to be exercised over such use. Since the establishment of the right of the State—using this term generically—to control railways, the struggle has been one over the limits of this control. New conditions require new laws. The conditions of to-day demand an effective control of all railway rates. In addition to traffic conditions known to exist, this demand is supported by the deep-seated and fundamental truth that rational beings are unwilling to vest the power which controls their individual and collective well-being in the unrestricted hands of even the most benevolent of men without, in turn, reserving in their own hands an instrument by which the conscious or unconscious misuse of that power can be checked and avoided. The question is whether or not the railway rate, which is indisputably the greatest single factor in shaping the

prosperity of our land, shall be controlled, in the last analysis, exclusively by one party, or whether both the great parties in interest shall be entitled, under express provisions of the law, to co-operate in controlling this factor. In discussing the problems of the regulation of railway rates in the form in which these are now before the American people, it has frequently been assumed, for partisan purposes, and depending upon the point of view of the person making the assumption, that one side or the other is composed chiefly of incompetent, dishonest, and designing men, while ability, integrity, and good faith are found entirely on the other side. In this paper, equal good faith, the same motives, and equal ability will be assumed for both railway officials and railway commission. I fully realize that the burden of conducting the business of transportation is not slight; that the conditions with which a railway has to deal are diverse and complicated; that no one man can hope to contribute more than humble help; and that, therefore, railway officials and railway commissions alike should feel the duty resting upon them of making the best contribution they can toward a correct result. Hundreds of rates are made every day; tens of thousands are in effect upon every large system. Does it not appeal to good judgment and reason that differences among interested parties which are bound to arise in these multifarious relations should be referred to an impartial tribunal with power to act, when such power is duly safeguarded? We are told that no such tribunal is needed, for the reason that railway rates are beyond the power of control by traffic men; that railway rate-makers are generally passive and merely "register" the commercial forces which are continually being reflected into their brains; that commercial conditions and the competition of markets determine rates; that, in short, the railway rate is merely the focus of a convex lens transmitting all the commercial, industrial and social forces of the territory to which the rate applies.

No State Without Its Rate Misfits.

That railway rates are in many cases the result of nicely balanced commercial conditions is demonstrable. That they are in other cases violating commercial conditions is equally demonstrable. The appeal to commercial conditions is sometimes a fact and sometimes fiction. When there is doubt as to which one of these shall be appealed to, tradition lends assistance, and a guess decides in what proportion fact, fiction and tra-

dition shall be combined in the rate. An examination of certain rate schedules forces one to conclude either that the commercial forces which the schedules are said to have "registered" are in a state of anarchy or that the mind which "registered" the schedules is pathological. There is, perhaps, no State in the Union in which there are not hundreds of misfits in the rate. Sometimes such misfits are due to inadvertence and blundering; sometimes to the dictates of the rate-maker; sometimes to the dictates of powerful shippers; sometimes to a poor compromise between competitive producing or consuming sections; but whatever the cause, they exist; and the mere fact of their existence is sufficient ground for the demand to give a commission power to fix rates within limitations prescribed by law. Many of the adjustments in matters of rates and service which would require the attention of commissions of this type are relatively minor affairs in the business of a railway company; and yet to the individual or community affected thereby they are often a matter of success or failure. Whether questions of rates and service are minor or major, a competent commission can gather relevant facts, call the interested parties together, bring about a better mutual understanding; and this generally means a satisfactory adjustment. To give a commission power over the rate and service does not necessarily mean the frequent or continual exercise of such power. In fact, the possession of power may be the safest guarantee against the necessity for the constant exercise of it. Representatives of the railways and representatives of other interests are likely to approach a commission in a very different attitude of mind if they know that the commission possesses vital power. The very existence of a competent commission is in itself a restraint on wrongdoing. A commission which can recommend everything, but do nothing, must acquiesce in glib phrases about the inexorable laws of commercial forces, the beneficence of free competition, the registrations of the passive traffic man, and the like. Give a commission power to go to the books of a railway company and elsewhere to get all the facts in existence, and power to act in accordance with the evidence before it, and it will generally not be necessary to exercise much additional power, for the reason that railway officials are too shrewd not to follow suggestions when the facts are against them. A diligent and competent commission can be of real service in revising rates and classifications in accordance with the necessities of each case. Railways and commissions can and must co-operate; and by co-operating year after year objectionable features can be eliminated or reduced, and a better understanding and feeling between the railways and the public established and maintained.

The "New Era of Competition."

Very recently a prominent Western railway official has been advocating legislation to protect railways against rate wars. He made, however, no suggestion

as to the necessity of instituting competent tribunals to protect the public against the railways or the railways against the public. All three of these—the protection of railways against one another, against the public, and the public against the railways—should be provided for under the law. The utterances of this Western railway official were probably prompted by the so-called "new era of competition" which has been heralded of late, and in which he foresees old dangers in new forms. No doubt there is severe competition for the field in certain Western territory just now, as the many plans for railway construction demonstrate. In a limited sense, every railway competes with every other railway. The competition for business is unquestionably severe within well-known limits. The competition of markets continues as long as competitive markets are served by competing carriers, and as much longer as the good grace of the rate-maker permits it; but competition as a regulator of rates and a protector against unreasonable or unjust rates has proven itself a failure in every country in which railway systems have been developed. Whatever influence the survivals of competition in the rate, the struggle for business, and the competition of territories may exert upon existing rates, it is certain that all of these together do not prevent occasional unreasonable rates and other misfits. The passive character of the traffic man in making rates has been exaggerated and reminds one of the sudden meeting of strange dogs. Whether or not the first dog will lie down with up-turned legs, crouch on his haunches, or stand up in the full dignity of his stature depends entirely upon the size of the dog who approaches him. Besieged and importuned from early till late, how much time has the average traffic man to devote to a careful study of his schedules and to the fine adjustments of the fifty or hundred thousand rates on his system? How many shippers who feel the lack of proper adjustments in rates can afford to urge their claims in expensive proceedings? How many are afraid to say what they think for fear of punishment? I assume that cases like these are the exception, but they require attention nevertheless; and nothing but a competent commission can meet the situation.

What a Commission Can Do.

It is argued that if a commission is given power to prescribe a rate, either on complaint or on its own initiative, the result will be a general remodelling of all rates in accordance with theoretical or political considerations controlling the commission. It is assumed that a commission cannot weigh with sufficient accuracy the conflicting commercial interests, and that if it could, the influence of opposing interests would cause a deadlock and prevent all action. Generally speaking, this position assumes ignorance, dependence and lack of energy on the part of commissions. A competent commission ought to be capable of realizing the importance of commercial conditions in general, and of those commercial conditions which are arti-

ficially created by the railway rate in particular. It should not be overlooked that the railway rate is the greatest creator of these very commercial conditions which the rate is said to express; and the traffic men who are said to "register" commercial forces may simply be accelerating the movement of the forces which they themselves initiated. The conflict of sectional interests is a reality. The impotence of a commission in the face of sectional interests is largely a myth. Antagonistic interests exist with or without commissions. Without commissions, sectional interests are settled, in the last analysis, by private railway officials in accordance with the interests and power of the respective roads. With a commission, the decision must necessarily be preceded by preliminary proceedings, more or less of a public nature, in which every interest, irrespective of its relative strength, is represented, and the decision rendered on the basis of all the facts brought forward in the proceedings. The famous Thurman-Cooley-Washburn arbitration decision of 1882, establishing the differentials between the North Atlantic ports, is a good illustration of what a commission can do in the way of settling questions which rivalry and jealousy, left to themselves, cannot adjust. It is true that this was merely a special advisory commission, but the present Interstate Commerce Commission accomplished equally satisfactory results, as announced in its decision of April 27, 1905, relating to the Atlantic Seaboard differentials as they stand to-day. In fact, any reasonable interpretation of situations like these would seem to suggest that a railway commission is peculiarly well fitted to arbitrate and decide questions arising from antagonistic interests of rival carriers, ports, or sections; and which, if left to themselves, would result in a series of wars and treaties, with the ultimate extinction or absorption of the less capable contestants. Many members of the American Economic Association are familiar with chapters of railway history illustrating this.

Federal Legislation and Sectional Rivalry.

With reference to the possibilities of sectional rivalries, it has been assumed that the conflict of interests will work itself out in the same manner under the proposed plan of extending the powers of the Interstate Commerce Commission as under a system of government ownership and operation. Nothing could be more fallacious. Without admitting that dangerous and costly conflicts of this kind are an inevitable accompaniment of State ownership, it should be pointed out that, irrespective of the form which such a conflict may assume, under government ownership it is possible that it may be carried into legislative bodies, and thus enter into whatever political struggles may be in progress. Under private ownership with government control, the conflicting interests appeal to the commission, which, within the limits of the law, renders a decision which ends the matter until a new case is brought. The alleged danger, under a system of enlarged powers of the Interstate Commerce Commission, of setting New York and New

Orleans and other cities and territories against one another is a phantom which has been conjured into the horizon of our future industrial life by means of a refracted view of the Prussian system. Atlantic and Gulf ports and the railways which serve them have been in conflict for years past. So have other producing, consuming and trading centers and areas. Proposed Federal legislation cannot, therefore, create this sectional rivalry. It already exists; but there exists no tribunal with power over the rate to which an appeal may be taken for the establishment of a just and reasonable basis upon which to continue the rivalry in so far as the strength of the rivals depends upon the railway rate.

Again, the danger of disturbing so-called fundamental rates is largely a myth, unless it is assumed that commissions with power to adjust rates are inevitably bent upon destructive work. Furthermore, the basal and fundamental rates are much more likely to rest upon adjustments of long standing than other rates, and generally are not so apt to represent misfits, causing complaints. A commission may change a thousand rates, involving adjustments of vital importance to particular interests and places, without affecting a single basal rate. The most of the changes which commissions are likely to be called upon to make are of this nature. But even the challenge of a basal rate does not necessarily bring harmful results to the house of cards of rate schedules. Until railway rates are made in a more scientific manner, and rest upon foundations which can be tangibly described and determined, it is well not to manifest too much anxiety regarding the inviolability of their present frail foundations. Reference may here be made to the impeachment of existing rate schedules by President A. B. Stickney and his belief in the possibility of making schedules methodically. "I desire to go on record as saying," says Mr. Stickney, "that in my opinion it is entirely possible to construct a tariff mathematically. It could be done easily by adding to the terminal expenses and the special burdens of each class of shipments practically constant quantities for the cost of hauling, which would be symmetrical, equitable and satisfactory both to the people and to the railroads. Furthermore, a schedule made in this way could be printed in a form so easily understood that any man of ordinary ability, by inspection of the schedules, could tell for himself the legal rate upon any shipment he might desire to make. To the ordinary man the present tariffs and schedules are about as plain as Greek or Choc-taw."* Perhaps the tariffs of the Chicago Great Western Railway will be remodelled upon this basis!

Railway commissions must accept the traditions of rate-making as they find them, until by faithful work they have gained such a degree of familiarity with schedules and the traffic to which the same apply that improvements may be introduced.

* *Railway Age*, September 29, 1905, p. 399.

Commission and Traffic Conditions.

The decisions of the Interstate Commerce Commission from the time of its organization to the present show no dogmatic adherence to any one principle of rate-making. The commission has approved or condemned rates in the light of the concrete conditions governing the same. In view of this indisputable fact, what warrant is there for spreading the alarm that rate-making by governmental authority is impossible upon any except the distance basis. The distance tariff is said to be the only one which a railway commission can prescribe and maintain. This allegation is as false to history as it is unjust to the good sense of the commissions. If it be assumed that all commissions are fools and all railway rate-makers wise men, we naturally turn to the wise men. A competent commission, or any other body of men of ordinary good sense, *can* be made to understand traffic conditions, except where these conditions, as they sometimes do, transcend understanding; and group rates, concentration rates, special contract rates, and all other kinds of legitimate rates are as possible under government control as without it. But it is the duty of a commission to see to it that all kinds of rates are granted impartially to all alike under similar circumstances and conditions. If the past history of railway rates in the United States could be wiped out completely and all rates made anew for our great systems of railways, it is probable that distance would be regarded more than it is to-day, and that the existing chaos in classifications, commodity rates, and rate-making in general would be superseded by some more rational system. This would be done, I believe, voluntarily by railway officials themselves, without suggestion from State authorities, for a great many railway officials realize altogether too well the defects of these houses of cards which rate-makers have constructed.

One feature of the controversy with reference to this phase of government rate-making is most extraordinary. It is this: The railway was created to overcome distance and to create place utilities; and now it is urged that a general regard for distance in making rates would bring ruin! In other words, compensation for the service of transportation shall be made to rest, so it is argued, chiefly upon every other consideration except that for which this service is specifically performed. No sane man would to-day introduce throughout the United States, if he had the power to do so, a pure distance tariff; but many sane men in the United States fail to understand the "beneficent" effects of a system of rate-making which absolutely neglects an extra distance of a thousand or fifteen hundred miles!

Twin Essentials of Railway Legislation.

Another objection which is made against giving the Interstate Commerce Commission power to fix rates is that the granting of such power will not prevent rebates and discriminations, because, it is said,

it will be as possible to deviate from rates prescribed by governmental authority as by private officials; and the latter class of rebates, it is said, can be reached in the courts under present laws. This is true; but it is only a part of the truth. In order to know whether or not a published rate is violated, it is necessary to know what the published rate is. It is also necessary to know whether the published rate is nominally charged and an illegitimate refund granted in disguise under one name or another. The first requires continual checking and comparison of schedules and an examination of the rules and regulations governing classifications and rates. The second requires an investigation of the books of the companies. Nothing but the most thorough examination of certain items which are well known to persons familiar with present day railway accounting will enable the question of rebates and discriminations or no rebates and discriminations to be reliably answered. The power to fix a rate and the power to examine railway accounts should be twins in the development of railway legislation. Neither is effective without the other; but together they can remedy all the existing abuses arising out of transportation charges. The only institution known to-day which is well fitted to deal efficiently with the two-fold problem of the rates and the accounts of carriers is the Commission.

The proposal to confer upon the Interstate Commerce Commission power over the rate and railway accounts has been objected to on the ground that the interests of investors will be prejudiced thereby. It should be a sufficient answer to this charge that the greatest agitation which this country has ever known in favor of more effective regulation and the highest railway values ever reached have gone hand in hand; and that several recent great transcontinental projects were nursed in the atmosphere of Government control. The statistical pages of certain financial journals have failed to record the fall in the value of securities which their editorial columns apparently predicted with certainty. When the influence of financial pirates on railway values has been eliminated it will be time to resort to the harmless play of investigating the losses sustained by investors through the activity of railway commissions.

Experience of Foreign Countries.

Perhaps the most unique opposition to proposed Federal legislation rests upon the alleged experience of foreign countries. In this appeal to the experiences of foreign countries, England has been generally omitted; although England, above all other European countries, has had experiences from which the United States might derive profit. Germany has been held up as a country in which the Government has paralyzed the railways and the railways have paralyzed industry. Terror-stricken, down-trodden German industry then appealed to canals. The German Government is fast extending its monopoly of waterways; hence, according to this story, we have the spectacle of a govern-

ment creating a second monopoly in order that it may compete with the first monopoly; and out of this balm of competition between two monopolies has come the modern, aggressive industrial Germany! In one breath we are told that German railways have caused excessive concentration of population, and that the German distance tariff prevents long distance transportation; that the railways have paralyzed Germany and that modern industrial Germany is the marvel of the world; that the German railways are merely feeders to canals and that there has been a marvellous increase in the volume of traffic on the railways! Yet it is admitted that the German people are generally satisfied with their railways; but they would not be, it is argued, if only they knew how the railways are oppressing them! In the United States, on the other hand, people express dissatisfaction; but they would utter nothing but words of approbation if only they understood the beneficence of the railway practices to which they now object! Suppose a German student were to argue, if such a one could be found, that the construction of the Panama Canal was conclusive evidence of the failure of the American transcontinental railways, and that the present canal policy of New York was in itself a conviction of the New York Central Railway, and a proof of the despair in which the oppressed New Yorkers found themselves; suppose he were further to refer to shipments around Cape Horn, the enormous traffic of the Great Lakes, and the survival of the coastwise traffic, as proofs of the incompetency of American railway management; he would then be adopting exactly the kind of reasoning which has been applied to German railway and industrial policy. In a word, I am ready to support the thesis that there is nothing of consequence in the railway history of Prussia and of France which militates against government control of railway rates in the United States. On the contrary, that experience proves "beyond a shadow of a doubt" that there are two, and only two, alternatives before the world to-day with respect to railways; either government ownership and operation, or rigid governmental control. My choice is the second alternative.

KANSAS FREIGHT RATE CONVENTION.

J. L. Bristow Points Out the Necessity of Avoiding the Prejudice of Fanatics and the Sophistry of Demagogues.

Six hundred delegates, representing commercial and farmers' organizations throughout Kansas, met in convention at Wichita on January 10 to perfect a permanent organization for the purpose of obtaining freight rate legislation. Thomas M. Potter was made permanent chairman. Speeches were made by Chairman Bristow; S. R. Vansant, former Governor of Minnesota; I. L. Lenroot, Speaker of the Wisconsin House of Representatives; J. L. Bristow, of Salina, former Fourth Assistant Postmaster General, and others.

After discussing local conditions, Mr. Bristow said:

"In Kansas, at this time, we must avoid the prejudice and fury of the fanatic as well as the clamor and sophistry of the demagogue. We must take hold of these transportation questions in a sensible and business-like manner. A dollar legitimately invested in a railroad has just as many rights as one invested in a farm, and on this basis we should proceed.

"In summarizing, therefore, I would say that the railroad situation in Kansas demands, first:

"That the attorney for the people receive compensation sufficient to enable him to be independent and aggressive, and to properly discharge the duties of his office during the term for which he is appointed, without financial loss or embarrassment.

"That the compensation of our Supreme Court Judges be fixed at an amount that will enable them to live with comfort and to accumulate a surplus, thereby relieving them of the temptation to seek employment from the powerful corporations whose interests in a judicial capacity they are required to pass upon.

"That a primary election law be enacted that will enable the people to express their choice more directly in the nomination of State officers, members of the Legislature, members of Congress and United States Senators; and

"That special attention should be given to the nomination and election of the right kind of men for Railroad Commissioners."

The address that caused the greatest enthusiasm among the delegates was delivered by Speaker I. L. Lenroot, of the Wisconsin House of Representatives, who, after narrating Senator La Follette's fight against the Republican organization, said, in part:

"What has been accomplished in Wisconsin is: A rate commission law giving to the commission power, on its own motion, to regulate rates and service; a taxation law under which railway corporations are bearing their full share of taxes; a primary election law providing for nominations by direct vote; a law prohibiting the giving of railway passes to public officials; a law driving the paid lobbyists from the legislative halls, limiting them to appearances before committees and printed briefs; a law prohibiting campaign contributions by corporations.

"And the message that I would leave with you to-day is: Demand first of all and through all, honesty in your public servants. Don't trust any man in politics whom you wouldn't trust in business. Make official integrity your first rallying cry. And remember, the test of integrity must be high."

The permanent organization will be known as the Kansas Civic League, and the following committee was appointed from the different Congressional districts:

First District—James A. Troutman, Topeka; Edwin Snyder, Jefferson County.

Second District—John D. Wood, Iola; Col. A. T. Atchison, Iola.

Third District—Senator Porter, Caney; O. S. Gibson, Arkansas City.

Fourth District—George Plum, Emporia; Ben Heilbrun, Osage City.

Fifth District—D. W. Cowden, Salina; Senator Harry McMillan, Minneapolis.

Sixth District—J. W. Berry, Jewel City; E. T. Madden, Hays City.

Seventh District—D. S. George, Hutchinson; D. W. Blane, Pratt.

Eighth District—R. B. Simon, Sumner County; E. B. Jewett, Sedgwick County.

GRAIN DEALERS AND TRANSPORTATION ISSUES.

Legalizing of Demurrage Charges Recommended, Making Them Reciprocal—Rules Covering Unusual Delays Needed—New Corn Deserves Care Never Given It.

BY H. E. KINNEY.

(From an address delivered before the Indiana Grain Dealers' Association at Indianapolis.)

My subject, "The Transportation Question from a Shipper's Point of View," is one of wide range and great importance. The effect on different branches of our association members varies in slight degree. Some of the important features affecting the country elevator man are only incidental to the track buyer; yet, upon the whole, all matters affecting the one in a way concern the other. We must, therefore, consider the country elevator and the farmer's trade as the foundation of our business and begin at that point.

For the local elevator man, or what we usually term country shipper, is the question of elevator location, leases, etc. The transportation companies have generally formulated what would seem to be a very unfair lease, where, from necessity, the elevator or warehouse must be built on company land, forcing the lessee to waive all rights of action against the lessor for neglect or refusal to perform duties as common carrier, thereby minimizing the value of his investment, destroying its use as collateral, or basis of credit, by imposing upon the lessee obligations which are almost impossible to carry out—such as confining of shipments to that particular road, right to cancel on short notice and in restraint of trade, as well as full control over tracks connected with such houses and business, and at will to designate them as regular team or hauling tracks, and in this way retard use and value of elevators, built at great cost to the shipper, for the use and benefit of the railroad. The State Railroad Commission should be empowered by our Legislature to pass upon the equities of the railroad company and the elevator owner, where elevator is built upon railroad companies' land.

Shippers who furnish elevator and storage facilities for railroad use, located either on private ground or railroad land, should be allowed compensation for storage of grain or other commodities pending the arrival of cars ordered for carrying such property.

Legalizing of Demurrage Charges.

We most heartily recommend the legalizing of demurrage charges, making the same reciprocal, covering delays in handling at terminal points, especially the switching and delivery of cars, defining what should constitute a reasonable time for service of a general and usual character, compensating the shipper and the carrier alike for all delays. We would also recommend a law for simplifying the recovery of damages suffered by shippers from deterioration and other losses occa-

sioned by failure to properly handle consignments in carloads. This, we think, should have legislative attention, and our commission should be fully empowered to enforce rules governing the service.

We would also urge most earnestly the Interstate Commerce Commission's attention to such rules or laws as will cover unusual delays in the handling of interstate traffic, defining reasonable time for delivery; safeguarding, in some way, the shipper of perishable goods, as the humane laws protect the shipper of live stock.

When the railroads accept our perishable corn and have full knowledge of the damages attending delay, they should be compelled to protect delivery, and where delivery cannot be made, run it into an elevator and have it handled as carefully as they would take care of live stock that has been on the road an unreasonable time.

Our grain, when perishable, as new corn always is—and conditions are well understood by traffic and transportation officials—deserves care never given it, and when accepted for transportation the carrier should accept responsibility of caring for it in a reasonable way. There is no plausible excuse for consuming five to ten days here in Indianapolis, in switching cars of new corn to an elevator for handling, and by such delay cause ruin of the property. Neither is there an excuse for allowing cars to stand on side tracks for weeks after loading or set out of trains causing grain to rot, the officials refusing or neglecting to locate by tracing. Numerous instances of this kind have occurred here in Indianapolis within the past two months, where our Belt road is the pride of all our people, and where delays in handling should be at a minimum. This is one of the special hardships of receivers. I have one man whose entire time is taken up in tracing cars when the movement is at all heavy, and some of his records would surprise you.

Discrimination in Furnishing Cars.

We have frequently been told, this season, that our grain traffic did not pay as good revenue as miscellaneous freight; therefore, we would be furnished no cars so long as they could be used for "house freight" or general merchandise. This discrimination is unjust, and I believe the figures will not warrant the assertion that "house freight" pays better, when the cost of handling in and out of cars and other expenses attendant upon its delivery are considered.

The railroads have specialized almost every line of service; four-day stock trains to Boston from Indiana and Illinois points, as well as fresh meat trains on the same schedule; three-day merchandise trains from New York to Indianapolis, with eight-hour trains between Chicago, Indianapolis and St. Louis for merchandise. At the same time they give us fifty-day trains for new corn to Boston; forty-day trains for New York or other Eastern points when cars are carded "New Corn. Perishable. Must not be delayed." These are not exaggerations. Any of us can cite cases this season of fifty days to seaboard when carriers accepted our corn as perishable and gave assurance that it would go through in ten days. We are deserving of better things. We must demand them.

The track buyer is particularly interested in the question of stable rates and adjustment of claims, such as arise from overcharges, damage to property in transit on account of delay, leaky cars, and general bad equipment forced upon shippers.

Rules effective on some roads compel agents, in billing cars, to bill at marked capacity of car, regardless of amount loaded; others at 10 per cent. over marked capacity. Some roads demand loading to 10 per cent. over, others at even marked weight, and some roads practice a system of raising weight on shipments of grain two to five thousand pounds above contents to insure them full revenue from connecting lines. The result is overcharges of all descriptions on domestic shipments, and long, tedious delays in their collection. Some remedy must be had. Claims for loss or damages in transit are always long time ones, frequently refused on purely technical grounds. Litigation being expensive, many smaller shippers are powerless to protect themselves, while large ones often get claims of all descriptions honored promptly as part of their compensation for business, which is only another name for rebate or concession.

Steady Rates Demanded.

The grain dealer is willing always to pay fair rates. No one complains of the charges prevailing at present, but we do object to frequent changes and uncertainty as to what the rate will be three or ten days hence. Being a business almost entirely transacted on a future shipment basis, the matter of rates is important, not that they be low or high, but that they remain steady. The issue of a "Midnight Tariff," so called, should be a crime. We would recommend that rates during regular seasons for movement of crops be not lowered or raised at all, making changes affecting only summer and winter schedules, and in no case a change on less than thirty days' publication.

The grain dealer, as well as other large shippers, is just now inclined to look for redress from all wrongs (either fancied or real) to the State Railroad Commission, recently established. We may expect some disappointment, because our business is too largely of an interstate character, and many of our complaints are outside of its jurisdiction. It is, therefore, most desirable that intimate relations be established between

the two commissions, so that united action between State and interstate may bring the results so much needed.

The high character of our own State Commission guarantees to every shipper and every carrier full justice and comprehension of the questions arising between the parties. Being so fortunate in its makeup, let us support it most cordially and bring to its aid legislators who will strengthen it and pass such measures as will bring about the reforms we so earnestly desire.

PRESIDENT STICKNEY'S RATE MOVE.

If the Proposed Cut Is Made by Other Roads It Will Cost Them \$6,000,000 Annually.

President A. B. Stickney, of the Great Western Railroad, recently announced to the vice presidents of various Western railroads who were in conference in Chicago regarding dry goods rates that "it is true that the Great Western is being solicited to make openly the same rates on dry goods from Chicago to the Missouri River as had been made secretly by the Burlington for two or three years. After the issuance of the Federal injunctions, and by means of a routing agency in New York, returns in the form of commissions to the agency were secretly made to certain big jobbers on the Missouri River. The Great Western is now solicited to make the same rate the open published tariff, and the matter is now under consideration. You gentlemen must have known what the secret rates were made, and it seems strange that you should become so frightened at the prospect of my making those rates the open published rates."

It is stated that if the cut made by the Great Western is met by the other roads it will cost them about \$6,000,000 yearly in revenue. Mr. Stickney's motive is not understood.

Municipal Control of Interstate Traffic.

The carriers are saying that "we have troubles of our own." The demand for rate regulation has reached such a state that, when the Pennsylvania Railroad applied to the New York Rapid Transit Commission contract committee for a franchise to construct a connecting road with the New York, New Haven & Hartford, the committee proposed to put in a provision that the commission could name the rates to be charged. This would mean municipal control of interstate traffic, and of course, under legal advice, the committee had to back down.

Shipment of Coffee in Bulk.

The practicability of shipping coffee in bulk, a method which, if successful, would revolutionize the handling of the bean in the port of New York, is being tried by the Arbuckle Brothers. Recently a cargo, the equivalent of 50,000 bags, sent in bulk from South America, was discharged at the Arbuckle dock in Brooklyn, and it is stated that the plan was entirely successful.

USE "ORDER NUMBER" IN NUMBERING PACKAGES.

Traffic Manager O. O. Hall, of the Honeyman Hardware Company, Describes the Excellent System Used by the Portland, Ore., Concern.

SUPPLEMENTING the article written by R. A. Kirk and printed in the January number of **FREIGHT** on "The Numbering of Freight Packages," the following letter will be found instructive:

Sticker Used by Honeyman Hardware Company

IMPORTANT NOTICE.

Owing to the similarity of our shipments in general, we experience considerable trouble account consignments from different shippers becoming interchanged in transit. To avoid this, please place this order number on every package, as a designating mark for the guidance of carriers, and have same noted on original bill of lading.

When shipment covers two or more orders, use only the first number.

HONEYMAN HARDWARE COMPANY.

HONEYMAN HARDWARE COMPANY,
PORTLAND, Ore., January 19, 1906. }

To the Editor of Freight:

SIR—I have just received the January issue of **FREIGHT** containing the paper prepared and read by R. A. Kirk at the National Hardware Association Convention, regarding the proper marking of freight shipments. I wish to go on record as heartily indorsing any proposition of this character, and will assist in every possible way to have such a plan adopted by all manufacturers.

We have for several years been urging all our shippers to place upon every package a designating mark (a number) for the guidance of carriers, and have same noted on original bill of lading. We have been more than pleased with the result of our efforts. We anticipate the negligence of shippers complained of by Mr. Kirk, that they would not continue the practice with only one request, or even repeated requests by letter, and therefore arranged to attach a sticker (sample inclosed) to *all our orders* for freight shipment, as a repeated reminder.

Our plan, however, differs in one feature from that presented by Mr. Kirk. We request that all packages constituting a shipment be given the same number and only one number, viz., *our order number*. Experience has taught us that this corrects at least two defects in the *shippers' serial number* plan. Presuming that shippers use their own series, it is possible and quite probable that among 100 or 200 shippers several will be using the same numbers. Suppose P. & F. Corbin ship us six cases of locks, Nos. 117, 118, 119, 120, 121, 122. At about the same time Yale & Towns ship us five cases of locks, Nos. 121, 122, 123, 124, 125. Shipments reach Chicago and are delivered Western connection on the same day. Corbin's case, No. 121,

weighing 170 pounds, is interchanged with Yale & Towne's case No. 121, weighing 65 pounds, and results in a discrepancy in weight at destination, and, as carriers deliver cases properly numbered, it is difficult to convince them of the error. This may seem to be an exceptional case, but it has occurred with us. Under our plan, each of the six cases in the Corbin's shipment would be numbered 3,049 (our order number) and each of the five cases in Yale & Towne's shipment would be numbered 3,172 (our order number). No two orders going from us could carry the same number, and consequently no two shipments to us could be numbered the same.

As another example, we will take the question of astray shipments, which is the most important feature. Supposing we check short, case No. 121 in Corbin's shipment and same is not delivered to us for two or three months. We check up our invoice, render claim for shortage and file all papers. When the case is received the No. 121 conveys no information to us whatever. Nor does it enable the delivering line to properly apply the "astray." Had the entire shipment been numbered 3,049, we would, of course, have taken the same action in checking and presenting our claim. When the astray case comes forward, we are notified by delivering line: "An astray case of locks, No. 3,049." We turn to our order book, which shows shipment from P. & F. Corbin, and their invoice dated September 5, 1905. Reference to this invoice shows we checked short on railroad, pro 1,570, September 21, 1905. We give to the railroad company reference to their billing, case is properly applied, and we recall our claim.

The substance of the matter is as follows: The shippers' numbers have no meaning to either the carriers or consignees, while the order number is a part of consignee's permanent record, and, being easily referred to, enables the carriers to obtain prompt and correct disposition of any and all astray shipments.

The success of any plan of this kind depends almost entirely upon uniform action by *all consignees* in requesting their shippers to adopt the system and follow it religiously, and upon the harmony of *consignees, shippers and carriers* in working together for the benefit of all.

Mr. Kirk's request that the National Hardware Association confer with the Manufacturers' Association is a good one, but I would add that the Railroad Freight Claim Association be taken into the conference, with the view of securing the co-operation of carriers and having agents note on bills of lading and way bills such marks as are placed on cases by shippers.

O. O. HALL, Traffic Manager.

Methods of the Canadian Railway Commission.

By GEORGE E. WEST.

A CONSIDERATION of the supervision, regulation and control of the Canadian railways as exercised today cannot but throw light upon the solution of the problem for this country. While the transportation of the United States is materially different from that of any other country, due to the physical character of the country, the relations between mileage and tonnage being different, the country which nearest approaches ours in this behalf is our northern neighbor. Not only is this true of the transportation problem, but there is also a great similarity in our jurisprudence and institutions. The basic law of both countries is the common law of England. And, while there are material differences between the Constitution of the Dominion of Canada and that of the United States, the broad underlying principles are much the same.

The Railway Commission of Canada is provided for by the Railway Act, entitled "An Act to amend and consolidate the law respecting railways," assented to October 24, 1903. This act is a comprehensive one, and, in addition to creating the Railway Commission, has provided for its proper procedure, deals with the incorporation, organization, construction, inspection and operation of railways, including provisions regarding tolls for passenger and freight traffic, pools, insolvent companies, offenses and repairs. The purpose of this paper is to state the jurisdiction and general powers of the Railway Commission and its practice and procedure as outlined in the law and under the rules made by the commission.

The technical name of the present Railway Commission is "The Board of Railway Commissioners for Canada," and it is the successor of the Railway Committee of the privy council. The Board consists of three members appointed by the Governor-in-Council, each appointed for a period of ten years. Each is eligible to reappointment, but any commissioner shall retire at the age of seventy-five years. The head of the commission is called the chief commissioner, with a salary of \$10,000 per year; a second is called the deputy chief commissioner, who, as well as the third commissioner has a salary of \$8,000 per year. It is provided that "such commission shall be a court of record and have an official seal, which shall be judicially noticed."

The Board is invested with the powers and duties of the railway committee of the privy council and is granted power to repeal or rescind any order or regulation made by the latter, which orders are in force until acted upon by the present Board. The deputy commissioner has all the powers of the chief commissioner in the latter's absence or inability to act. It is provided that no less than two of the commissioners shall attend at a hearing except there be no opposing party, when one of the commissioners alone may act.

No commissioner is disqualified by reason of interest or relationship to any party interested in a proceeding before the commission, but no commissioner shall be financially interested in any railway securities or have any interest in any patented article used by carriers.

The commissioners are required to reside at Ottawa or within five miles thereof, but the distance may be increased by the Governor-in-Council. The members of the Board are required to devote their entire time to the performance of their duties and shall hold no other office or employment inconsistent with the performance of the same. The sessions of the Board are held at Ottawa, but whenever the circumstances render it expedient it may hold sessions in any part of Canada. The sessions may be held in such time and in such manner as the commission may find convenient for the speedy dispatch of business, and the commission may sit together or separately and "either in private or open court." Two of the commissioners constitute a quorum, and a vacancy on the commission does not impair the right of the remaining members to act.

The secretary of the commission has the custody and care of the documents and records, and it is his duty to promulgate the regulations or orders of the Board. These regulations have all the force of judgments of courts of record, and a certified copy of the same may be had upon application by any one and on the payment of such fees as the Board may prescribe. The Governor-in-Council is authorized from time to time to appoint experts or persons having technical or special knowledge of the matters in question and assist the Board in an advisory capacity.

The Board has full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested:

(a) Complaining that there has been a violation of the act by a company or persons or of a regulation or order by the same or by the inspecting engineer.

(b) Requesting the Board to make any order or sanction or approve any matter within the scope of its authority.

The Board may order any company to perform forthwith, within the specified time and in the manner prescribed by the Board, any act, matter or thing which they are required to do by the act, and has "full jurisdiction to hear and determine all matters, whether of law or fact"; to procure attendance of witnesses, production of documents, enforcement of its orders and all other matters for the proper exercise of its jurisdiction under the act. The decisions of the Board upon any question of fact, as well as whether a party is an interested party, is binding and conclusive upon parties to the proceeding in all courts. Authority is given the Board of its own motion to inquire into, hear

and determine any matter or thing which is made its duty to investigate under the act, and it may decide in this behalf and exercise the same powers as if there had been an application or complaint.

(a) The Board may make orders and regulations concerning the speed of railway trains in towns, cities and villages, and may prescribe different rates of speed at different parts of the same town.

(b) Respecting whistling in any city, town or village or portion thereof.

(c) With respect to the means of passing from one car to another for the safety of railroad employees.

(d) Requiring shelter to be provided for employees when on duty.

(e) With respect to the use of engines, netting, screens, grates and other devices, and generally, in connection with the railway, respecting the construction, use, maintenance of fire guards.

(f) With respect to the rolling stock, apparatus, appliances, signals used by the carrier so as to provide means for the due protection of the property, employees and the public.

(g) Generally with respect to any matter, act, or thing required to be done or prohibited.

The documents of the commission are the prima facie evidence in a court without proof of the signature to them, and if the document purports to be a copy of any regulation or order of the Board or of the inspecting engineer such document is prima facie evidence of what it purports to be. Notice to interested parties is provided by delivering the notice or a copy thereof to one of the officials of the company or to a municipal officer for the municipality to one of the partnership or to the individual. Service by publication is provided for in certain cases. The orders of the Board are required to be published in the *Canadian Gazette*, which orders, when so published, shall have the same effect as if part of the statute and the court be required to take judicial notice of the same. The Board is authorized to pass contingent orders, which it has authority to change after hearing. It is also authorized to grant part of the relief prayed and to refuse the balance. Interlocutory as well as final orders may be used. The Board is not bound by any findings of judgment of any other court involving the determination of the same fact; nor is its jurisdiction affected by collateral suits. The Board may, if it desire, state a case in writing for the opinion of the Supreme Court of Canada, and ask a decision upon the law involved in the particular case. Authority is given to the Governor-in-Council, upon petition of a party interested or of his own motion, to vary, change or rescind any order or decision made by the Board. Appeals from the Board to the Supreme Court of Canada upon questions of jurisdiction may be granted by the Judge of the Supreme Court in much the same manner as appeals lie to the same court on questions of law. When cases are appealed the appellant is required to give security for costs.

In regard to making inquiries for the purpose of carrying out the act the inspecting engineer or person appointed has the right to enter upon and inspect places and works and to require the attendance of witnesses, compelling them to answer under oath such questions as he sees fit to propound and require, as well as the production of all books and papers. No one is excused from testifying or producing documents on the ground that the testimony or evidence will tend to incriminate him.

Under the provision of the act liberal rules of practice and forms have been laid down by the Board. The general sessions are always held at Ottawa, while special sessions may be held at other places. The attention of the Board is called to a violation of the act or it has authority to require the carrier to do anything by means of the application or complaint, which is made in writing and contains a clear and concise statement of the facts, the ground of the application, the section of the act under which the same is made, the nature of the order applied for, and the relief to which the applicant claims he is entitled. This complaint is divided into paragraphs resembling a bill in equity and a copy is furnished to the secretary of the Board. This complaint is served upon the carrier, who must, within ten days from the date of service, reply thereto. The complainant has a right, within four days after the receipt of the reply, to object to answer on the ground that it is insufficient, or he may deny the facts stated by the company, or admit the same or any part thereof. If issues be not framed by the complaint, answer and reply, the Board may require issues to be framed prior to hearing. The usual rules relating to the production and inspection of documents and notice to produce documents and witnesses are incorporated in the rules of practice. At the hearings witnesses are examined *via voce*, but the Board may take affidavits if they see fit, or evidence may be given before the commissioners appointed by the Board for the purpose. It is customary in the larger cases to have the evidence given personally by the witnesses, while in lesser matters a commissioner is appointed by the Board to investigate and report his findings of fact.

The Board in rendering its decision may dismiss the application or may make such order as may seem to be warranted by the evidence and just in the premises. The decision may be either verbal or in writing and need not be given in open court. Any rule, order or decree of the Board is of the same force, weight and effect as a rule, order or decree of any superior court of Canada. Application may be made to the Board to review, rescind or vary its decision within thirty days after same has been rendered, unless the time be extended by the Board. *Ex-parte* orders may be issued requiring or forbidding anything to be done concerning which the Board has jurisdiction under the act to determine. In the matter of fees they rest in the discretion of the Board and may be taxed as it shall see fit.

TO PUNISH SIXTEEN REBATING METHODS.

The Parker Bill Reported by the Judiciary Committee of the House Provides for Suit by the United States, or an Informer, to Recover.

THE report of the Judiciary Committee of the House on the Parker bill providing for the suit by the United States or an informer to recover the amounts received as rebates is worthy of consideration. In the language of the report "we believe that the provisions of this bill meet the crying need. They go directly to the injury—the unlawful benefit of the few by the plunder of the many—and ask that this benefit be restored, or twice its value if willful.

The bill provides that the receiver of rebates may be a defendant in a court of competent jurisdiction for the amount received, and if received knowingly for double the amount.

The following excerpts from the report are of value as throwing light on rebates and the means by which favoritism is effected in the present system of railway operation:

"It is at last coming to be thoroughly understood that the trusts have fattened in rebates, discriminations and concessions by which they have reaped benefits and advantages in which the rest of the community could not share and which have been of vast monetary value to them. This bill is intended to enable this wrong to be corrected, so that the future beneficiary of any such unlawful and special benefits and advantages shall be forced to yield up all the profit that he shall acquire thereby, and shall be liable to the United States in a civil action therefor.

"Until recently it has hardly been realized to what an extent certain persons and corporations have fattened on the public by means of unlawful rebates, or how utterly inadequate the present fines and punishments are to meet the profits that are being received. These profits apparently run into the millions. Some years ago it was admitted by the president of the Atchison, Topeka and Santa Fé Railroad that departures from the published rates had cost that company between five hundred thousand and a million a year, and its revenues were then about one-fortieth of the revenues of the railroads of the United States; so that if the like proportion existed on other roads the annual profits, on which monopoly was built up, amounted to between twenty and forty millions of dollars.

"The Hon. Charles A. Prouty, of the Interstate Commerce Commission, on April 2, 1902, made the statement that recent investigations by the Commission indicated that in the year 1901 the railway companies had paid the great packing houses at least \$2,000,000, probably more.

"It is needless to specify instances. Perhaps some claims are not founded on fact; but no one doubts that millions each year go into the pockets of big shippers by concessions in which the public has no share.

"It is obvious that the punishment by a fine of a few thousand dollars is utterly inadequate to remedy this evil. It is a remedy that is wanted rather than a punishment—a remedy which will make these men pay as much as the rest of the community for the public service of common carriers. Equality is equity, and there is no real remedy until they are forced to pay at least as much for the same service as others.

"Discrimination for the same service is unlawful at common law. But there are numerous statutory provisions declaring rebates, concessions, preferences, gratuities and discriminations to be unlawful, and in every such case this bill would apply.

"The common carrier in such case is not paid for its services. But the common carrier is a party to the unlawful rebate, and where both parties are equally at fault there can be no recovery. *In pari delicto melior est conditio possidentis*. Legislation which would change this rule would be against public policy. Railroads would not go back on their own unlawful contracts or bring suit in good faith. Some one else must be the plaintiff, not the carrier.

"Nor is the carrier the proper plaintiff. It has not been injured, for in most cases it has secured an enormous business by the unlawful rebate. It is the public who are injured by preventing competition, ruining competitors of the favored shipper, enhancement of the prices of products, and all the evil consequences of monopoly. It is the public that should recover from the purse of the beneficiary the value that was unlawfully given to him and which has been in his hands an unlawful advantage not shared by the public. The public may condemn and take these unlawful gains, just as it condemns and takes a pirate's vessel (Rev. Stat., 4296), or dutiable articles concealed in baggage and not reported (Rev. Stat., 2802), or unmanifested merchandise (Rev. Stat., 2809), or merchandise falsely invoiced (Rev. Stat., 2839), or unloaded without permit (Rev. Stat., 2867), or on perjury (Rev. Stat., 2924).

"These and many other cases of forfeiture of the corpus delicti are embodied in our statutes, and these forfeitures are in addition to all criminal punishment. The precedents for such legislation are full.

"These, too, are much stronger cases. They are strictly forfeiture of private property, while under the first section of the bill nothing is taken which really belonged to the beneficiary, but only the value of an advantage which was unlawful and never ought to have been his."

The bill distinguishes between rebates knowingly received and those which shall be ignorantly taken, and justly so.

"It is the duty, perhaps, of the shipper to look into the published rates, and pay nothing less. In many cases, however, he simply tells the carrier the amount of his business, suggests that a proper rate should be made and proposes to go to another carrier if good terms be not granted. Even in the flagrant cases of the big trusts, this, in some cases, is all that can be proved. It does not need words to convey a threat that their vast patronage will go elsewhere unless concessions be made. The case is still more complicated cars, or private terminals, or amount of shipment, or any of the various conditions of transportation. Any suit that alleges a willful and knowing violation of the law would probably fail, just as prosecutions have mostly failed hitherto.

"The business question in which the public are interested is not whether discrimination is willful, but

when the question is one of the locality, or of competing points, or of the value of allowance for private whether it exists and how it can be redressed. A suit under the first section would enable the simple question of the existence of the discrimination to be considered and decided without any need of averring any evil intent, and in such manner that the shipper and carrier, if honest, will bring in their books and help the decision of whether the discrimination is lawful or unlawful, and if unlawful, to what extent. After that decision, if the discrimination be still maintained, there will be full foundation for saying that it was knowingly received, and for a suit under the second section for double the value of the unlawful benefit or advantage.

"The suit for double the value of the benefit is applicable not only to such persistence in preferences which have been adjudged to be unlawful, but also to a vast class of secret bargains and agreements which are plainly intended to evade the law. Among these may be various forms of rebates noted by the Interstate Commerce Commission.

"1. Direct repayment of a portion of the rate originally paid on the basis of the published tariff.

"2. Indirect payment, by various devices; such, for illustration, as making of presents to shippers or to members of their families.

"3. Special contracts at reduced rates.

"4. Allowance of fictitious claims, presented by understanding with the railroad company, alleging damage to shipments received in course of transportation.

"5. False classification and underbilling. This covers false description of character of freight, false weights, and carrying of traffic for distances longer than those covered by the billing and the rate.

"6. Shipping goods at the export rate to the seaboard when intended for domestic use.

"7. Cutting rates or making repayments on traffic wholly within one State, and therefore not subject to the interstate commerce act, and intended to apply upon or influence interstate traffic of the same shipper.

"8. Excessive divisions of through rates granted by railway lines to short terminal roads or spurs operated by and built mainly or entirely to serve large manufacturing establishments. Such terminal roads may embrace nothing more than the various tracks within the yards of such manufacturing establishments, built to connect the various shops comprising the plant, and a connection with regular lines of railway either just outside of or at a point in close proximity to the plant. A 'railroad company' is organized to operate such switch tracks, the stock being entirely owned by the interests in control of the plant. By the payment of an excessive amount to such terminal line as a 'division' of the through rate for the service performed in taking the cars to and from the manufacturing establishment a cut in the tariff rate is effected.

"9. Leasing of railway elevators to large handlers of grain, and making contracts with them providing for excessive allowances for the elevation and transfer of their grain, resulting in exceptional advantage to the lessee over other grain buyers and dealers.

"10. Payment of excessive mileage upon private cars, giving an undue and unfair advantage to the owner of such cars when he is also a shipper, or to those shipping on those cars if he divide profits with them.

"11. Division of commissions of agents with the shipper.

"12. Giving free transportation to shippers and their families.

"13. Free cartage or cartage allowances made for one shipper and not for others.

"14. Permitting storage of freight in railroad depots or freight warehouses, and in cars on track, beyond the free time limit open to the general public.

"15. Setting aside of space in railroad depots and warehouses for certain shippers for the purpose of enabling them to perform work necessary to put their goods in better marketable condition before or after transportation, thus saving the shipper the expense of renting or maintaining a warehouse in which to perform the same work.

"16. 'Midnight tariffs,' so called, being a secret agreement with a favored shipper that the published rates for a locality will be reduced on a certain day, before which time the shipper can buy all the goods affected, so that the reduction, when published, operates to his sole benefit."

"This bill is one to prevent trusts, by confiscating or penalizing their unlawful gains. In this matter of trusts the paramount question is the redress of rebates, special privileges, and advantages in interstate freight contracts. It is by the aid of such unlawful privileges and advantages that the great monopolies of the land are believed to have been built up and maintained. The interstate commerce law forbids all such advantages, but its penal provisions have utterly failed to prevent them.

"They, perhaps, usually consist, not in rebates of money, but in special privileges, as to which it is difficult or impossible to prove criminal intent, so that prosecutions of the carrier under that act have generally failed, and prosecutions of the shipper will probably be just as futile."

Western Fruit Jobbers' Association.

The Western Fruit Jobbers Association, in convention at Des Moines, Iowa, adopted resolutions approving the Interstate Commerce Commission's bill for the Government regulation of rates, etc., and asking Congress to eliminate private freight cars, correct refrigerator abuses and bring express companies under interstate commerce acts, and prohibiting their dealing in commodities handled by them. The resolutions are aimed at private car lines.

Secretary E. B. Branch notifies **FREIGHT** that the resolutions also have the indorsement of the California Fruit Growers' Exchange and the Southern Fruit Growers' Association.

Rate Making in Spain.

The Spanish Government has granted railway companies the right to make special freight rates over certain sections of their systems; but the right is given under positive restrictive conditions. The proposed rates must be first submitted to the Ministry of Commerce and be advertised in the *Madrid Gazette*.

The commercial interests there have fifteen days in which to file a protest against the proposed rates. If not vetoed by the Minister of Commerce the special rates may be brought into force in sixty days after submission.

TACT NEEDED TO FORM A JUST RATE LAW.

Its Effectiveness Depends Upon the Certainty of Its Execution, and the Plan Providing a Special Court Meets the Requirement--A Legal View.

BY JOSEPH D. SULLIVAN.

THE main characteristics of a law to regulate rates of carriers should be:

(a). It should provide a remedy for present conditions.

(b). It should, as far as possible, be acceptable to both carrier and shipper.

(c). It should be expeditious and sure in its operations.

(d). It should safely avoid conflict with the Constitution of the United States.

1—No act which does not provide a full and complete remedy for present conditions should, at this time, be given consideration. We have had enough of half-way measures and experiments. The evils are apparent, the law should comprehend them all. The burden of arguments advanced by the railroads is non-interference. Direful calamities are predicted. The country, however, will not be led away by their pessimism. The real danger lies in permitting the present situation to continue.

2—It is not well, by any means, to totally ignore the wishes of the railroad interests in framing such a law. Much can be accomplished by a tactful yielding in some matters, adoption of their suggestions in others, and the removal of provisions unnecessarily severe, and in this way needless litigation may be avoided for the future.

3—The effectiveness of all laws depends upon the certainty of their execution. A law, per se excellent, may become of no importance by not being put in operation. Those laws are best observed whose breach is followed by swift, sure punishment. Severity is not nearly so valuable in securing observance of law as certainty of punishment. Nor should there be delay in the putting into motion the machinery of the law. Delay leads to injustice—to contempt of law.

No Conflict With the Constitution.

4—Finally there should be no conflict with the Federal Constitution. Congress has been given exclusive and plenary power to regulate interstate commerce. There are no restrictions upon this power but those contained in the Constitution itself; but where that Constitution imposes restraints, either directly or by necessary implication, the power of Congress is nullified, the Constitution having been made the supreme law of the land. Not only should no bill be passed which is out of harmony with the Constitution, but in such vital matters as this, where the interests involved are as extensive as our broad land, and the value of the property affected a considerable portion of the wealth of our nation, no plan should be adopted which cannot clearly demonstrate its lack of conflict with that instrument, and this, too, by a safe margin.

Reviewing the measures which have been proposed to Congress, and testing them by these criterions, it is found that the majority of them offend against the last and most important of all. Bills which seek to confer upon a commission the power to name rates, which shall be binding upon the railroads, invite protracted litigation, and will produce evil effects which will survive long after the litigation has ended. If it be, and the Supreme Court has so declared, that to determine whether a rate is reasonable, either from the point of the shipper or that of the carrier, is a judicial function, and, on the other hand, to determine what a rate for the future shall be is a legislative function, the power sought to be conferred upon such a commission savors of both these functions, and we have established a quasi-judicial quasi-legislative body; an anomaly under our form of government.

Can a Legislature Delegate Its Powers?

There is also urged against bills drawn upon such a plan the objection that the Legislature cannot delegate its powers of legislation. This objection appears to be based upon firm ground. Why have a National Congress at all, if its powers can be exercised by a commission? To permit such a delegation is to subvert the whole design of government. Empowering the Commission to promulgate rates which have the force of law, and for a failure to observe which a carrier can be punished, is unquestionably the delegation of legislative power.

There is, however, a plan proposed which meets all these requirements, and in addition surrounds the enforcement of the remedy with all those safeguards which, with the experience of centuries, the growth of the Anglo-Saxon law has provided. The plan makes of the Commission a purely administrative body, with no other powers than to examine complaints, initiate proceedings, and see that the provisions of the law are enforced. It provides a special court before which all controversies of this nature can be adjusted. Such a court, provided with adequate machinery for the enforcement of its decrees, would perform only the judicial function of passing on the reasonableness of the rates as they were brought to its attention, and its decree would declare what the reasonable rate was. Such a decree, fortified by the legislative enactment that all rates charged by carriers should be "just and reasonable," would obviate the necessity of prescribing particular rates for the future. The carriers could be compelled to observe the "reasonable" rate so ascertained by judicial inquiry, with a full opportunity to all parties to be heard.

World's Transportation Routes and Systems.

THE Bureau of Statistics, Department of Commerce and Labor, has published as a part of its Monthly Summary of Commerce and Finance for November, 1905, and also issued in separate form, some interesting statistics, to which are given the title of "Transportation Routes and Systems of the World." An outline map, showing the world divisions by continents, with some rough sketching of railway lines thereon, and also indicating various sea routes, is inserted in the pamphlet.

This map, while of little importance commercially, has considerable interest for the student or economist, and indeed the whole publication is chiefly valuable as furnishing in convenient form statistical information relating to the development throughout the world of railways in miles and tonnage by sea. There is also included a statement showing the number of passengers and the freight tonnage carried, the average receipts per passenger and the average rate per ton per mile from 1882 to 1904, inclusive, for roads in the United States. Some interesting rate tables showing the average rates on grain and provisions over various routes for differing series of years are also furnished. All these are of value as reference or historical data. The publication is, taken altogether, an instructive document, and it reflects credit upon the bureau in which it was compiled.

Some of the conclusions which may be based upon the figures presented are set forth in the text, from which the following paragraph is taken:

The development of the systems of transportation which now place the producer in the interior of one continent in direct communication with the consumer in the interior of another continent is the product of a comparatively few years. Within the lifetime of men and women now living the world had not a single mile of railway or a single steamship crossing the ocean. Today the world has on land 550,000 miles of railway, and on the ocean 6,000,000 net tons of sail carrying power and 18,000,000 net tons of steam

carrying power. At the beginning of the last century the sail carrying power aggregated 4,000,000 tons; the steam carrying power on the ocean did not exist, nor did railways on land exist. By the middle of the century sail carrying power on the ocean was more than 11,000,000 tons, the steam carrying power on the ocean was less than 1,000,000 tons, and the railways on land were but 24,000 miles. By 1880 sail power on the ocean had reached 14,500,000 tons, steam power over 6,000,000 tons, and railways on land 225,000 miles. From that time forward steam power on the ocean so rapidly took the place of the sail that in 1905 sailing vessels on the ocean aggregate but 6,000,000 tons carrying power, while steam vessels have an aggregate tonnage of 18,500,000 tons, and railways an aggregate of 550,000 miles in length, of which 217,000 miles, or two-fifths of the total, are in the United States. The wonderful effect on commerce of this increase of transportation power on land and ocean is shown in the fact that the international commerce of the world has grown from about 1,480 million dollars in 1800 to approximately 22 billions in 1905. Thus, under the newly created transportation systems of the last century, which have developed the interior of continents and made merchantable many commodities which formerly would not bear the cost of transportation, the international commerce of the world is today about fifteen times as much as at the beginning of last century, while the world's population is but two and one-half times as much as at that time, the commerce of the world's population as a whole having thus grown from less than \$2.50 per capita in 1800 to nearly \$14 per capita at the present time.

It is hoped that the Department of Commerce and Labor will continue its publication of these special statistics. The inclusion in the pamphlet above reviewed of certain transportation rates suggests that much valuable information respecting changes in current rates on United States railways could be furnished by the Interstate Commerce Commission through the issuance of weekly bulletins devoted to that purpose. Information of that description having reference to existing rate conditions would be really valuable to shippers throughout the country.

TWO SOUTHERN POLITICAL VIEWS.

Hon. Hoke Smith Says Railroad Influences Are Worked to the Detriment of the State of Georgia.

Recently Hon. Hoke Smith, in a speech at Columbus, Ga., replying to Clark Howell, a candidate for Governor, charged that railroad influences were being worked to the detriment of that State and the candidate as being always ready to rush to the defense of the carrier. He charged that legislation providing for the Pullman Company had been defeated and also legislation looking toward increased powers of the railroad commission and legislation to prohibit free passage. He asks for the increased power of the State Railroad Commission, but refrains from making any statement upon the Federal situation. It may be re-

marked incidentally that Mr. Smith himself could be induced to accept the Georgia Democratic gubernatorial nomination.

A candidate for Governor of Alabama, Hon. B. B. Comer, has come out for increased powers of the State Commission, stating:

"I will say to you in all candor that I am not working for a commission made rate; I am working for a law made rate, working for a rate that the courts of Alabama will pass upon, and in the great finality of this fight that is where it is going to end—at the bar of the courts—and all of this talk about the unreasonableness to the railroads of lowering their rates is superficial; for, as stated, this question must go for final adjudication to the courts of the State, and they are fair."

RATE MAKING SENTIMENT OF THE SOUTH.

Major Dooley, of Richmond, Va., Says the President Has Asked the Fly to Walk Into the Parlor of the Spider.

It cannot be gainsaid that prior to the President's Southern trip last fall the people of that locality were not particularly interested in, nor was there any widespread desire for the regulation of railroad rates. By reason of his strong personality and his favorable speech at Raleigh, the Executive won many ardent admirers and even advocates in that section. They admire the man and commended his zeal and from his earnest address they inferred that he must be correct in his premises. If we are to judge, however, from recent utterances coming from that section of the country the President has not now the undivided support of the South in the matter of details, at least, on this important subject.

The Southern papers teem with the difficulty attendant upon making rates; the difficulty of securing justice as between localities; the difficulties of fixing rates by a political board. They would appear to fear that if this matter is to be left in the hands of a board they could not appreciate the industrial needs of the South and the necessities of that section. These objections are not confined to one paper, but are reiterated by a very large number of the influential journals of that section.

Major Dooley, of Richmond, has recently put forth a paper in which he says that the President has asked the fly to walk into the parlor of the spider.

"Rate regulation," he says, "is the regulation of the prices at which goods can be sold at different cities and ports throughout the country."

He cites numerous instances wherein he says the Union since the war has been conducted for the benefit of the North and West, but that now the South is a rival to the North in its iron industry and in several other important pursuits. He states the fact that the Southern ports are now rivals of the Northern ports and asserts that the "No Preference" clause of the Constitution prevents the Government from making rates.

"As the Federal Board of Commissioners," he says, "would be political in its nature and subject to the pressure of public opinion, it is almost certain that the differentials would be held to be an unjust discrimination, or unreasonable rates, and the Commission would make new rates, which would turn our business to Northern and Eastern ports."

Col. J. W. Killibrew says with respect to the proposition to give to an administrative body power to make its findings effective is "to secure the benefits of a trial before the cause is tried. This would do for the age of Nero, but now it is unpardonable. The railroads have not always done right. They have often given

privileges and rebates to large shippers that they have denied to smaller ones. But is this any excuse for virtually taking the property out of the hands of their owners? National and private banks have not always acted with impartiality with their customers, but surely it would not be considered right that the fixing of the rates of exchange and discount should for that reason be placed in the hands of a political bank commission. There are laws to prevent railroads from making discrimination in freight to shippers. Let these laws be enforced. If the Government is unable to enforce the laws already enacted, it seems fanatical folly and acute delirium to enact others that are to be enforced by a political commission."

The former general manager of the Plant System, Mr. H. S. Haines, was in Savannah some time ago, and his address, as exemplified in his recent work, has been taken up by several of the Southern papers. Mr. Haines is said to have stated that his view did not agree with the view generally presented and that he has no interest save that of the people.

"When I say the people," said Mr. Haines, "I do not mean the business community, which wants rates regulated so that their community will get better rates than some other community, nor do I refer to any other class of people. I refer to the consumer. There are producers and non-producers, but all of us are consumers, and the regulation of rates should be directed to the end of conserving the greatest good to the greatest number.

"But," he continued, "if it were possible that the absolute power for regulating freight rates should be given to me if it were offered to me I should decline. The question is too abstruse. They are thinking about this question. They can think of but one thing at once, but they are thinking of this and they will work out the solution before they are through with it."

The eminent secretary of the New Orleans Cotton Exchange, Henry G. Hester, has addressed an open letter to Senator Foster in which he refers to the rapid strides made in railroad building in the South during the last decade, but states that every one recognizes the existence of transportation evils of the country. He urges upon the Senator that to give to the Interstate Commerce Commission rate making powers would be a step toward socialism, the evil result of which it is impossible to foresee. He further expresses the opinion that the Senator will never lend his aid or influence toward the consummation of any legislation which may possibly place the Southern country at a disadvantage compared with other sections."

Mr. Teller on Freedom of Debate in the Senate.

In the Senate recently Senator Teller, speaking on the pure food bill, said some pungent things about matters not germane to the subject before that body. On the freedom of debate in the upper house he said:

"Freedom of debate in the Senate is such that we are entitled to speak on any subject, and I thank God that we are, because it is the only body under the Government in which there can be open discussion. It is the only place where the spoken word can go to the people; and a great writer on international law and liberty has declared that the right of free and full discussion of public affairs is the dearest thing that a free people could have and the last thing that they should surrender.

"Although here in the Senate we may sometimes transcend the usual ideas of debate and go beyond what in other places is permissible, yet after a hundred years or more no injury has come to the republic by the action of this body."

Later he undertook to say a thing or two about the position of the Senate regarding railroad rate legislation. He said:

"But the important item of legislation before this body and the House is the question of regulating railroads and their rates. A year ago last December the President of the United States sent us a message in which he declared a principle upon which he thought it wise for us to pass a law. He said he thought it would be wise to give the Interstate Commerce Commission power, whenever a railroad had made a rate that was unfair or unreasonable, to change the rate and put the new rate in operation until the railroad should go into some court and there have it set aside as an improper decision on the part of the Commission.

"At the last session of Congress the House sent us a bill. It was called the 'Esch-Townsend bill.' It came here, I think, about three or four weeks before Congress adjourned by law. We had before us one of the important things of that session, and that was an impeachment case. It was a judicial hearing by this body. It was a hearing that could not be hurried. It was a hearing upon which every Senator was to act as a judge, and nothing that came before this body could justify us in neglecting our duty in that particular.

"Then there were left about two weeks before Congress was compelled to adjourn. There is nowhere a man who is disposed to be fair, and who knows anything of public affairs, who knows anything of the difficulty of dealing with this question, who can say that we could have dealt with it in the two weeks. We in this body ought not to be charged as a body with any dereliction of duty because we did not take up and pass that bill. We had a right to pass upon these questions ourselves. Nay, more, it was our duty to do it. We were not to take up so great a subject as that, involving millions of dollars, involving great legal principles, upon which the legal profession of the nation are at sea, and pass a bill in haste.

"What was this body made for? It was supposed when this body was organized that it would stand against the public cry for immediate legislation; that it would stand against the 'radicalism,' if I may so term of it, of another body, moved, perhaps, because of their close relation to the voters of the country. We were to come, not only with clean hands, but with clean judgment. We were to look into these things.

"It has been six weeks—almost eight weeks now—since Congress assembled, and yet there is no rate bill here. Can anybody say that there has been any dereliction here because the rate bill is not before this body? There is not a body of lawyers anywhere in this country who can sit down together—ninety of them, the best in the land—and agree what is the law, in the first place; and if they know what the law is, can agree what will be the method of enforcing the law so as to give protection not only to the shipper, but to the railroads. We cannot legislate, and we will not legislate, in the interest of either of them. When we come to legislate we will take into consideration the interest of all the people and the combined capital connected with these great enterprises.

"Does delay here indicate that the Senate is obstructing the President in that particular? I have here on my table—I sent over and got them—thirty odd bills pending now in the House of Representatives touching this question, and I have seven bills which have been introduced in the Senate touching the same question. That indicates the diversity of opinion in this body and the other, and while we might perhaps get up a bill and send it over to the House, the House would have to be convinced that the bill is a good measure.

"Mr. President, I am moved to say these things because the Senate is being attacked, the Senate is being derided, the Senate is being abused, because we have not with quick feet rushed to the solution of this question, which needs the wisdom of the world to settle. If we should settle it improperly, the old adage would come in that no question is settled until it has been settled right, and it would appear before us again. It is wisdom to delay, it is wisdom to take time, and it is wisdom on the part of the Executive and his friends to let the legislative body deal with this subject. He has expressed his opinion—and that is all the law authorizes him to do—and there he should stand. A proper respect for the Senate, a decent regard for the legislative body, should incline the Executive and those who stand near him to let the Senate work out this great problem as it sees fit, and not in haste.

"Mr. President, I do not know that it is worth while to have said this—much more might be said—but I do think the time has come when the Senate should vindicate its right to deliberate legislation, when the Senate should vindicate its right to legislate without Executive interference. Mr. President, when the time comes I shall be ready to vote upon this question. I shall not say now how I am going to vote. I shall vote as I think the interest of the whole country demands. If I should agree with the President and vote with him it will not be because of anything he has said or anything he has done. I take it that is the position of this membership, that we will pass upon this question because it is our duty to pass upon it and not the Executive's. We will act with the other branch of Congress, and we will not let them send us a bill here at the close of the session in hot haste and demand of us that we pass it. We will take time to deliberate on it, and when we get through all that, the chances are a hundred to one we shall have made a mistake. But we shall have some excuse for the mistake we make if we make it after careful deliberation, after careful consideration, after we have considered every argument for and against the proposition. Then we shall be able to say to the country, if they complain, that we did the best we could."

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WE maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from subscribers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically. If the complaint is well founded, upon request, **FREIGHT** will mediate between the complainant and the carrier.

Subscribers who do not receive their copies of **FREIGHT** promptly each month will oblige the publishers by acquainting them with that fact without delay.

THE bills introduced at the present session of Congress for the amendment of the Interstate Commerce Act are very numerous. On the House side there are bills numbered 77 (Campbell), 216 (Robinson), 254 (Thomas), 296 (Richardson), 468, 469 (Hearst), 4425 (Townsend), 5966 (Adamson), 6019 (Sheppard), 8414 (Sulzer), 8999 (Olcott), 10097, 10098 (Hogg), 10099 (Hepburn), 1271 (Prince), 11488 (Hepburn), 12312 (Davey).

Consideration of the Various Rate Bills. In the Senate the more important bills are numbered 285 (Foraker), 1378 (Tillman), 2261 (Dolliver), 2686 (Culberson), and 2828 (Morgan). It is necessary in determining what these measures contain to consider the Elkins bill, not yet introduced, although extracts of it have been made public. Some of the measures are so inartfully drawn and are so crude that they appear to have been introduced with no intention that they would receive consideration. Others are skillfully worded, some at great length; others concise and brief.

The substantive portions of the act to be amended, if one shall consider a composite bill using the measures from both ends of the Capitol, are numerous. Private cars are defined and placed under the control of the government and made subject to the act. The methods of the keeping of accounts, the prohibition under a penalty of keeping other accounts and the examinations of these accounts are provided for with the intent of securing publicity of the financial business of the carriers. Provisions concerning additional and special reports, upon demand, are doubtless inserted for the same purpose.

There is a tendency to increase the number of the members of the Interstate Commerce Commission, where it is to be retained, and given greater powers, but to diminish the number of the commission where it is to be only an investigating, detecting and prosecuting body; in the latter instance authority to employ experts and counsel is granted.

When the remedial portion of the bills is considered one finds that he cannot make a composite bill, for here the ways diverge. On the one hand, it is proposed to endow the Interstate Commerce Commission with power after hearing and investigation to substitute a rate ("maximum," or "fairly remunerative," or "remunerative," or just plain "rate") or practice in lieu of an existing rate or practice. On the other, it is proposed to give to the existing courts, or a new special court, jurisdiction to enjoin that portion of a rate which it finds unreasonable upon a complaint filed on behalf of the shipper by the Interstate Commerce Commission and by preventive or mandatory process destroy or apply to a larger field a particular practice. Each of the plans has its nicety of reasoning and of constitutionality; each has its friends. Some friends from choice; some friends from necessity.

One wonders how the shipper, the party most interested, will come out. What will he draw from this bag of schemes? What will become of him while the solons are arguing? And one wonders what will be the process by the route he will be compelled to go.

Assume that there comes out of the legislative mill a bill giving to the Interstate Commerce Commission power to fix a rate—it is at this time immaterial what brand is used. The shipper files a complaint; if wise he will hire a lawyer, but these are not always necessary. The carrier answers. The hearing is set; perhaps one or two more hearings are required. The decision of the commission is rendered. And the aggrieved party has been fortunate enough to win after a lapse of time. We hesitate to say how long—we might make it too brief. But the shipper wins and there is joy in the house of Ward. The carrier does nothing. It has no faith in the decision of the commission. The carrier's attorneys are paid to be among the class of "oh! ye of little faith." The plot thickens and the mystery deepens. To inforce or not to inforce. The machinery of the court is invoked. Petition filed. Defence—Constitutional guarantees not allowed; law unconstitutional; procedure irregular; commission in error in law and on facts, etc., etc., ad nauseum—for the lawyers know how. More pleadings—if that is what they are called—more court papers anyway. And after hearing, argument and a decision—which is worth something.

The other plan—we do not need to go through the verbiage—has the first handicapped by just the amount of time that will be consumed by the commission. The second plan is coming down the home stretch while the first is at the post. It is just the Canadian and English system adapted to our national life and in accordance with our written Constitution. Real, earnest, energetic and wise legislators will consider the needs of the country. We do not boast when we say that many such have done so and are heartily in favor of the court plan as proposed by the eminent Judge Grosscup of Chicago.

It has been announced that the United States Steel Corporation will no longer accept rebates on its shipments. Thus has the spasm of virtue reached those whose tonnage is large. Will it ever stop? If we are to believe the statements that people with large tonnage really make the rates, is it necessary for the steel industry to announce its decision to "be good?" If the shipper who controls large tonnage can designate the figures on the tariff sheet, is there necessity for departures from them?

THE man whose pleasure it was to introduce into the House of Representatives a bill providing for the Grosscup Plan for the amendment of the Interstate Commerce Law is Judge Herschel M. Hogg. He began in December last his second term in Congress, and represents the Second District of Colorado. Judge Hogg is a lawyer and a polished gentleman, well informed on public affairs and familiar with transportation meth-

ods. Born of Scotch-Irish parentage, he has the excellent qualities of both, and is noted for his persistency and fighting abilities. He is a native of Ohio, and was born at Youngstown in 1853. His alma mater is Monmouth College, Illinois, from which institution he received the degree of A. B. in 1876 and M. A. in 1879. He first began the practice of law in Illinois in 1878. Subsequently removing to Colorado, he was made City Attorney of Gunnison; later he was elected District Attorney of the Seventh Judicial District of Colorado, which position he held for seven years. He has also served as City Attorney at his home, Telluride, and also County Attorney of San Miguel County, Col.

We cannot but congratulate the many indorsers of the Grosscup Plan on the man who will champion their views. He knows he is right, and, being right, will urge the measure he has introduced and fight with all the zeal and energy of which he is capable for the accomplishment of legislation which will mean more than a hollow show and a tinkling cymbal. The shippers of the country are behind him, and, continuing to lend their aid and support, the victory cannot but be assured if right is to prevail.

A PROMINENT trade journal with a said-to-be large circulation throws yellow journal headlines in its January number above the letters it publishes from subscribers on the Railroad Rate Question. The letters number one less than a dozen and come from nine States. Come again, brother! You have not as yet touched the threshold of the rate situation.

THERE exist today two extremes of thought concerning the settlement of disputes of whatever nature between railways and the users of transportation facilities.

On the one hand there are those who urge that the shippers and carriers should be absolutely free and untrammelled, and be permitted to enter into such agreements as they may see fit, urging and believing

Freight's Offer of Mediation in Railway Matters.

that the shipper who properly presents his case to the carrier will secure not only a consideration of his case, but justice for himself, the traffic and the locality which he represents. There is little question of doubt that many cases have been, and will be, satisfactorily adjusted by this method of procedure. Unfortunately, however, it is not every user of transportation facilities who can reach the ear of the proper transportation official. And some who can secure an audience cannot properly present their case, while others, even after a proper presentation, will find that their claim is not justified by what they think is the importance of their case. The large dealer, or the dealer in a commodity favored by transportation owners, or the dealer at the favored locality, will receive favorable consideration at the hands of the carrier. If some user of transportation facilities is capable of pleasantly tickling some one or more of the five human senses of the traffic manager, or if large tonnage is in the scale, this

method will work to perfection. Unfortunately, many are unacquainted with the means of reaching the five human senses; others are incapable of showing a medium, not to say large, quantity of tonnage; and others, as we have indicated, are either too modest or do not consider the game worth the candle to raise a question; others prefer to suffer the evils they have than to fly to others they know not of.

On the other hand, there are those who, having in mind the class of shippers who cannot properly present their cases, urge in most strenuous terms paternalism on the part of the government to a degree which they would not countenance in any other sphere of business activity. They hold up in holy horror the evils of the corporation, well knowing that under individual ownership the carriers of today would be far worse managed than under existing corporate ownership. They propose interference by the Government in every matter of detail; they urge the adoption of laws more strenuous than the blue laws of colonial times. Many who thus urge are those whose claims for change of practices have not been acceded to by the carriers, and they proceed upon an entirely selfish basis; others are so imbued with what they think to be "public demand" for legislation that they feed the press with utterances denouncing the existing social system, when in truth, and in fact, they are not pessimistic, but optimistic.

Between these two widely diverted lines of thought is a class far greater in number than either of those just mentioned. It is a class which appreciates the argument of those who advocate the presentation by the injured shipper of his case and appreciate as well the necessity for governmental interference in certain classes of disputes. It is the conservative class, the class which is neither wholly pessimistic nor wholly optimistic; it is the class which allows to each individual all of his rights, to be secured first, if possible, at his request, but if this means fail, then to be given to him through the strong arm of the State. It is the class which is in favor of, first, mediation, and when this means of arriving at a satisfactory understanding shall have failed, the invoking of judicial process first, to declare and then to maintain the rights of the respective parties.

The advantages of mediation as a first step to the correction of an abuse has been recognized ever since society was crystallized into States; arbitration, by contesting parties, has always been favored by the courts; arbitration is one of the strong features of the business associations of today. And, while it represents, in a measure, the early judicial system, in that the judges of fact are familiar with the customs of the particular trade, not to say the facts of the particular transaction, it furnishes a cheap, adequate and prompt solution of the particular question in many instances. We do not mean to confuse mediation with arbitration. The second is more formal than the first mentioned. The mediator ought to be, and most frequently is, an

independent party performing the functions somewhat judicially, and force and effect is given to his decisions by reason of the moral weight which attaches to his sense and good judgment.

Recent illustrations of the "getting together" of contending parties are to be found in the 8,000 informal complaints which have been satisfactorily settled through the intervention of the Interstate Commerce Commission in its eighteen years of service. The shippers and carriers of the State of Ohio in their committee, constituted by representatives from both parties, for nearly two years have adjusted complaints, settled claims, agreed upon demurrage rules, and, in short, handled the railroad policy of that State in a manner which is reported to be satisfactory to both parties. The dispute concerning the conditions of the Uniform Bill of Lading seems to be on a road toward settlement by the committee consisting of representatives from the two parties. It is reported that the question of demurrage in the United States is about to be placed in the hands of trustworthy gentlemen, the individual interests of some of whom are with the carriers and others with the shippers. We do not mean to suggest that individual shippers and officials of a railway or a joint committee of shippers and carriers or the mediation or intervention of a governmental body will furnish a panacea for all of the evils with which the present transportation system is invested. Such procedure has, however, its proper place in business affairs, and it occupies today a peculiar and unique, as well as powerful, position in the affairs affecting carriers and shippers. Mediation will not cure rebates. But it will assist in lessening the number of complaints of unjust discrimination and undue prejudices. It is a well known fact that certain localities have no objection as localities to the present transportation system. The reason is clear. That locality knows that it is favored by the carriers serving it. The same statement and the same reason apply to shippers; the same statement and the same reason can be alleged for certain commodities. A better understanding is liable to result from a frank conference than from a judicial proceeding in which the parties are moved solely by the motive to win.

We commend to the aggrieved parties the policy of trying mediation. And we tender to our subscribers in this behalf such services as we may be able to render them if they will present their individual cases to us.

Secretaries of commercial and public bodies throughout the United States are invited to report their proceedings to FREIGHT. All subjects of general interest relating to freight rates and transportation questions will be published in detail. Communications of this kind should be addressed to Editor FREIGHT, 116 Nassau street, New York city.

PRESIDENT ROOSEVELT, in his message in December last, said: "The question of transportation lies at the root of all industrial success." In December, 1904, he said: "Above all else, we must strive to keep the highways of commerce open to all on equal terms."

This language has been interpreted to apply only to carriers by rail, and little attention has been paid to rates for water transportation or rules and regulations established by Federal or State authority in this important branch of transportation. The wave of condemnation which is being heaped upon the heads of corporations, irrespective of the business in which they are engaged, may account for the oversight of the public in neglecting to say anything concerning the abuses of water transportation, for these instrumentalities, if sailing vessels, are in general not controlled by corporations, but by owners, each of whom has a fractional interest in the vessel and its freight.

The question of compulsory pilotage presents, by reason of the conflict between the laws of the several States, an interesting and peculiar situation showing discriminations. Coastwise vessels propelled by steam are exempt in all of the States from compulsory pilotage. Sailing vessels are required to pay no pilotage under United States laws, Congress having specifically left the matter to the several States until Federal authority shall legislate thereon. The North Atlantic States have no compulsory pilotage, while many of the States bordering upon the South Atlantic and Gulf, require that vessels entering their ports shall employ pilots licensed under State authority. The basis of the pilotage, in States where it exists, is tonnage. The amount varies from \$40 to \$150 per vessel, and means to the consumers and to the producers of those States that additional charge upon merchandise in and out bound. Not only does the existing state of the law discriminate against sailing vessels, but it is said to be a common occurrence that some sailing vessels are allowed to enter various ports without paying pilotage, while others are required to do so, showing, if true, a faulty execution of the law. Some of the Southern States have seen the error of their ways in this behalf, and have repealed their compulsory pilotage statutes, notably North Carolina, which recently abolished the compulsory pilotage for the port of Wilmington.

There would seem to be no good reason for compulsory pilotage when every sailing vessel entering a port must be a tow to the tug, which is in charge of a competent pilot, licensed by the United States. The system is pernicious and a tax on coastwise trade prohibits free intercourse with the States that have laws exacting these charges.

The only prompt and adequate solution of the matter is for Congress to pass a bill abolishing compulsory pilotage, but permitting the master of any vessel to secure a pilot licensed by State authority, if he deems his services necessary. The matter has been consid-

ered for many years without any action, and it is time that all of the highways of commerce should be free and untrammelled and not be burdened with heavy charges which smack more of the "sound duties" of Holland than legitimate pilotage fees in this enlightened age.

THE article in this number on the Railway Commission of Canada is both interesting and instructive. Writing recently of this subject, Hon. Robert Bickerdike, M. P., said: "The Commission has been in control for over a year now; not a very long time, perhaps, but long enough to satisfy the people that a court of this nature is an absolute necessity." The method of procedure seems

Satisfaction Given by the Canadian Railway Commission.

to be simple: A complaint alleging a violation of the act is filed; to this a reply is required in ten days. On the complaint and answers the issues are framed and by the Board determined.

It is a fallacy to suppose that the Canadian Commission is a commission in the sense in which we on this side of the boundary use the term. It is a "court of record" and has all the rights, powers and privileges of a Superior Court. It is not an administrative, but a judicial body, and is a special court, having jurisdiction only to inquire, hear and determine alleged violations of the law.

For simplicity and fairness the scheme adopted by Canada must be commended. If such machinery is adapted to that country, which, in its transportation, is nearest like ours, why would it be unsuited to our needs?

THE methods of reaching private cars, as shown in the bills introduced in the Federal Legislature for the amendment of the Interstate Commerce Act, divide themselves into two main heads. On the one hand it is proposed to include them under a definition of the term "transportation," and on the

Methods of Reaching the Private Cars.

other private cars are designated as cars not owned by the railroads. The first class is found in the Hepburn, Dolliver and Townsend bills, which define transportation to include cars and other vehicles, instrumentalities and facilities of shipment or carriage, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported, and it is provided that the charges for such transportation shall be reasonable.

The other method of reaching private cars is found in the Hogg bill (H. R. 10098), and they are described as cars not owned by a railroad, and it is provided that the owners or operators shall file tariff schedules and reports stating the mileage or per diem paid, and providing that the charges to the shipper in connection

with such service and the payments by the carrier therefor must be reasonable and just, and the owners and operator must file a schedule of such charges.

It looks a bit odd that "icing" shall mean transportation or that transportation shall mean icing; the same may be said of ventilation, storage and other services. These are facilities of commerce and incidental to commerce; they are not transportation in any sense of the word, as heretofore used. It would seem that Congress is to define a word and then make a law to suit that definition. It has never occurred that a word has been given a particular meaning and then legislated upon, except in defining crimes or misdemeanors. Lawmakers are not makers of dictionaries. The Hepburn bill does not provide for the publicity of these matters, as does the Hogg bill. The former stipulates that the furnisher of cars shall charge a reasonable rate, but the relation between the owner of private cars and the carrier is left to the whims of the two contracting parties. Cars built for a special purpose, other than the transportation of perishable merchandise, would not be under any control or supervision by the Government, and what about cars specially constructed for coal, cooperage, furniture, etc.? If all private cars are the vehicles of discrimination, why not provide that they may all be placed under Government supervision, and not attempt to govern one class only, one kind only, and thereby pass a bill which would be unconstitutional as class legislation?

THE express business received a bit of a bunting the other day in the House. It seems that there had already been paid to them over \$120,000 during the current fiscal year for the transportation of silver coin from subtreasuries to banks. This was not enough, and the Secretary of the

Something for Congress to Investigate. Treasury had asked for an additional appropriation of \$10,000. It developed in the debate that there was no good reason for the sending of coin by the express companies, that the law permitted the Treasury to send it by registered mail, or by such other means as it might see fit. The Secretary of the Treasury has seen fit to add to the coffers of the express companies by transporting it in that manner.

But this was not all. It was stated in debate, and not denied, that a shipment of coin from New York to Yonkers, fourteen miles, had been sent by a circuitous route of three hundred miles, all to the great benefit of three express companies. It is to be hoped that the halls of the House, having heard something of this subject, will cause a Congressional investigation of the carriers, whose sole business is largely the same as that done in other countries by the post office. No one knows their charges; they file no tariff; no one knows who is responsible; they are subject to no regu-

lation, no publicity, and are, upon the whole, absolute masters of the situation.

J. OGDEN ARMOUR has undertaken, in the *Saturday Evening Post*, to convince the public of the necessity for the private refrigerator car. He states that this means of transportation has caused to be opened up a large amount of producing territory

The Admirable Nerve of J. Ogden Armour.

which had not hitherto been available; that it has increased the value of fruit lands, and in other ways has been a boon to the producer of fruits. The present agitation, he charges, is due to the zeal of commission merchants, whose sole stock in trade formerly was the liability that fruit would arrive in poor condition at destination. He also cites that there is no complaint from the growers; that the rates of transportation are reasonable and that there are serious losses in the operation of private car lines, due many times to the failure of crops in a particular locality and other reasons. In order to demonstrate that the private refrigerator cars have "made good" he gives an illustration of one occasion when the Armours paid the growers a sum of money because cars were not at hand as promised.

We must leave to those who are not agreed as to facts to determine just what the situation is concerning the private cars. The discussion is, however, being narrowed down to those cars which are specially built, and have particular, often patented, devices for the conservation of perishable articles.

The issue seems to be becoming "fogged." The private car is as much a vehicle of discrimination in the coal business, in the cooperage business, in the furniture business and in many other kinds of trade as in the fruit and vegetable business. It is possible that in some trade and with some firms the private car fills a long felt want and is honestly manipulated; if so, we are glad to know it. We believe, however, that the private car of to-day is largely filling the place occupied by the "transportation lines" of a dozen years ago and merits the condemnation usually accorded to ticket scalpers. When a transportation line can secure ten per cent. of the freight rate for soliciting (as has been done) and the private car can be used to make or kill a locality or a firm, it is time that there existed some means to correct the evil.

All commodities do not need ventilation or refrigeration, and yet there are people who fail to appreciate that under a very large number of contracts between the owners of private cars, who are also dealers, and the carriers, the individual without this equipment has little or no show to do a successful business. Again, it will be worthless to attempt to get your own cars; if you had them, you could not get them carried by the railroads; certainly not at a mileage rate or an allowance of one-half cent per mile to you.

We admire the nerve of Mr. Armour in trying to justify the monopoly which he has on the refrigerating business. Let a few of the coal companies, tank line operators and the other owners of private cars do likewise, and we shall then know how philanthropic the favored are.

THE House Committee on Judiciary has promptly and favorably reported the bill introduced by Representative Parker to authorize the recovery by the United States of the value of unlawful rebates. The act, which is a short one, divides the penalty into two main heads. If one "receive from any common carrier any benefit or advantage by any unlawful rebate, concession, preference, gratuity or discrimination in respect" of interstate or foreign commerce, the amount so received may be recovered, with costs, by the Federal Government. If the same be received *knowingly*, the penalty is double the amount received. Suit may be brought by the Attorney General or an informer, and in the latter case the informer is entitled to one-half of the amount recovered. The proposed statute is cumulative, and does not change the existing remedies in respect to rebates. No additional penalty is, however, placed upon the carrier, the act providing for recovery from the recipient of rebates and not to the giver.

Senator La Follette Finds "Freight" Useful.

Executive Chamber,

Madison, Wis., December 23, 1905.

T. T. Le Berthon, Manager Freight Publishing Company, 116 Nassau street, New York City:

DEAR SIR—Enclosed herewith I hand you my check for \$3, in payment of my subscription to FREIGHT. I find this publication very useful in my work.

Yours truly,

ROBERT M. LA FOLLETTE.

From the Richmond Chamber of Commerce.

Freight Publishing Company:

GENTLEMEN—I have yours of the 21st ult. I shall be very glad to renew my subscription of your paper, and have turned over your account of \$3 to the secretary who disburses the funds of this bureau, and in due time you will hear from him.

I note that the scope of your paper will be extended during the present year, and trust that the success which you have had up to this time may continue in increasing proportions.

THE RICHMOND CHAMBER OF COMMERCE,
E. S. GOODMAN, Manager.

RICHMOND, Va., January 2, 1906.

PROGRESS IN RATE MAKING.

Little Doubt That Final Decision Will Rest With the Senate, Which Will Act in Its Own Time.

[From the New York Sun, January 23, 1906.]

Prediction of the outcome of the railway rate controversy is about as unsafe as the prediction of next year's cotton crop. There will probably be a crop. It is also probable that there will be a rate bill. There is a surfeit of bills from which a choice may be made and there is a woful complexity of proposals. There are probably few who recognize the various bills by the names they bear.

The impatience of some leads them to charge the Senate with wilful delay from unworthy motives. The one great fact emphasized by the experience of the last twelve months is the wisdom of the Senate in taking time to consider this question. The House, which last winter rushed the Esch-Townsend bill through in very much the same manner as it would dispose of a routine pension bill, is not repeating its performance. The bill to which it gave such overwhelming approval, and which only three months ago was declared by some to be the Administration bill, is now only "among those present."

That final decision will rest with the Senate no one doubts. The matter has now reached a point where there is involved a question of methods rather than a question of purpose. It is not so much whether a bill shall be passed as what kind of a bill. This involves intricate points of law upon which there is a somewhat radical difference of opinion. The main issue is the scope of the proper powers of the Interstate Commerce Commission. Rate regulation involves the exercise of three distinct powers, the administrative, the legislative and the judicial. All admit that the commission is an administrative body. Some claim that by delegation it may be endowed with legislative powers. None, probably, holds that it can act in a judicial capacity.

Whatever is done must be done lawfully. Otherwise the condition would be worse than it now is. Impatient ignorance would disregard the points of law involved, clamors for immediate action and regards careful deliberation only as obstruction. Yet there is ground for sincere thankfulness that the Senate does not plunge. It would even be much better to wait another year for a good bill than to enact overhastily a bad one.

WANTED.

**Two Copies
FREIGHT,
THE SHIPPERS' FORUM,
for August, 1904.**

Address

EDITOR OF FREIGHT,
No. 116 Nassau St., New York.

“Just, Reasonable and Fairly Remunerative.”

To the Editor of Freight:

SIR—Now that it appears that there is to be the following language regarding rates enacted into law, as descriptive of what the rates for transportation shall be, we wish to inquire what kind of rates are in the mind of Congress and what the shippers may expect. We refer to rates which are to be “just, reasonable and fairly remunerative.”

C. G. Co.

Boston, January 24, 1906.

We cannot well lay down a rule by which to describe the rates that will prevail, using language other than that provided for in the measure which is referred to. A definition of the word “just” in the Standard Dictionary is as follows:

“Consistent with what is proper and reasonable; not extreme, extraordinary or unusual; fair size, amount, etc.”

“Reasonable,” according to the same authority, is that which is “characterized by moderation; moderate.”

“Fairly” means measurably, reasonably, tolerably; and also fully, completely, evidently.

“Remunerative” means affording or tending to afford ample remuneration; giving good or sufficient return; paying, profitable.

Coupled together, we would say that the attributes of a just, reasonable and fairly remunerative rate might be either one of two kinds: first, it might be a rate, in amount fair, reasonable under all the circumstances in connection with the specific matter, and

measurably or tolerably remunerative. Again, the term might be interpreted to mean a rate, in amount fair, reasonable under all the circumstances and fully remunerative or paying. What will be the interpretation of the courts, we, of course, can only conjecture.

The term “just and reasonable” in connection with the first section of the present Interstate Commerce Law has been interpreted as follows:

In *Interstate Commerce Commission vs. Southern Ry.* (117 Fed. 741) it was said that the greatest weight should be given to the following considerations: the opinions of expert witnesses; the effect of the rates charged upon the growth and prosperity of the locality; the cost of transportation as compared with the rates charged; and rates in force to other cities similarly situated.

In *Interstate Commerce Commission vs. C. N. O. & T. P. Ry.* (167 U. S. 511) it was said that the interests of the carrier, the shipper and the public must be considered.

In one view of the matter, we are inclined to think that the words “fairly remunerative” do not add anything to the words “just and reasonable”—either to the benefit of the carrier or the user of railway facilities. In another view, viz., that the term “fairly remunerative” may mean fully remunerative, we are inclined to the belief that it may be a help to the carrier and not a benefit to the shipper.—[Ed.]

Side Lights on the Washington Situation.

THE situation at Washington concerning the proposal for rate regulation is not materially different from what it has been for several months. Each week brings into sharper contrast the set views and opinions of the leaders for and against regulation of railroad rates. It would not appear that the better informed members are any closer together on this subject than they have been in the past. It simply means that they have said more upon the subject and thereby indicated their position. The statement on the floor of the Senate recently that there were as many views upon the subject as there were members of that body is in all probability literally true. The views vary from belief in the most drastic legislation to those who are confident that nothing whatever need be done at the present time.

The deliberations in Congress, now and doubtless in the future, will differ from the methods used in the days of Webster and Clay. In the good old times when a subject of great importance was before either of the Houses it was the custom for one man to thoroughly inform himself upon the subject, and, having done so, make a concise and comprehensive speech expressing

his views and the reason therefor. His opponent made an argument wherein he attacked the premises of the first and then his views were outlined. To-day the speeches are more numerous and only one small phase of the subject is taken up at a time. Beyond that single portion of the subject which the speaker intends to cover he refuses to go.

That the situation will, sooner or later, assume a partisan aspect was forecasted the other day during the speech of Senator Clay. In his peroration he urged that the power be given the Interstate Commerce Commission or some similar body to name rates which should come into effect at once, and expressed his opinion that unless such legislation was enacted the country would soon be in the throes of municipal ownership, the advocates of which are increasing, as was shown in the recent mayoralty contest in New York. This bait was nabbed by Senator Aldrich, who expressed the opinion that it was a peculiar situation when the Democratic party should ask the Republicans to vote for a measure which was identically as proposed originally by one of the candidates for Mayor of New York, and he represented and advocated both municipal and government ownership.

Executive Influence on National Legislation.

WILLIAM E. CURTIS, writing on the subject of executive pressure in the matter of legislation, says, in the Chicago Record-Herald:

"Theoretically, the President of the United States has no more right to influence or even advise members of the Senate and the House of Representatives as to how they shall vote than he has to influence members of the Supreme Court how they shall decide the cases that are brought before them. He has no more authority to tamper with the legislative branch of the government than with the judicial, and it would not look well for him to send for Justice Harlan or Justice Brown and tell them that he would like to have them 'sustain the administration' by deciding Philippine cases one way or Porto Rican cases another. Nevertheless that is what he and his predecessors have done continuously almost from the beginning of our history as a nation. The three branches of the Government, the executive, legislative and judicial, are supposed to be, as they were intended to be, entirely independent of each other. Each has its own conscience, judgment and reasoning powers, and each is supposed to be governed by them, and not by personal or partisan motives and influences.

"The Constitution says: 'He (the President) shall from time to time give to the Congress information as to the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient.'

All Presidents Have Used Patronage.

"In the exercise of that prerogative all of the Presidents have taken the trouble to confer personally with members of the co-ordinate body, and their recommendations have been attended with more or less pressure and moral suasion. The distribution of patronage by the President has been governed to a considerable degree through all generations by the manner in which his recommendations have been received. If St. Peter should make all of the Presidents of the United States stand up in a row and ask them if they ever used patronage to secure legislation every one of them would be compelled to plead guilty, even the saintly Adams! and as for Grover Cleveland, the testimony of Arthur Pue Gorman, George Graham Vest, William L. Wilson and other democratic leaders, living and dead, would convict him on every count in the indictment.

"Every President has used patronage to influence legislation more or less and both directly and indirectly. Every President has used personal and official favors to accomplish his purposes. President after President, without exception, has endeavored to persuade or compel Congress to adopt recommendations for legislation he has made under his constitutional prerogative to secure the confirmation of his nominations and the ratification of treaties. They have been compelled to use such methods in order to get things done. The Senators are less susceptible to such influences than the Representatives because their terms of office are longer and the manner of their election is different. Hence it takes more patronage and more persuasion to get a bill through the Senate than through the House of Representatives. Votes in the Senate cost more than they do in the House. If the President did not use this pressure he would not accomplish much.

"The same arguments, the same pressure, the same patronage is used in every legislative body and in

every common council in the country and in every other country wherever the opportunity and the materials occur. It is the inevitable result of conditions. If an executive desires to secure legislation he will naturally use such means as are at his disposal.

"President Cleveland, as I have said, used more coercion upon Congress than any other man in the list of Presidents. He had about as much trouble with Congress as Cromwell had with the British Parliament. You will remember his letter, which created a decided sensation by referring to Congress as a 'drove of wild horses.' You will remember, too, his long fight with the Senate over their respective prerogatives, the most serious that has ever occurred between the co-ordinate branches of the Government since its organization.

President Roosevelt's Candor.

"What always has been probably always will be. As long as Presidents take an interest in legislation they may be expected to use to their personal influence. their patronage and every other inducement they can control to secure the adoption of their recommendations. The personal characteristics of President Roosevelt; his earnestness and determination, and his ambition to accomplish things will undoubtedly excite more criticism in this particular than has been directed to any of his predecessors. He does not send for a member of the House and tell him bluntly that he will appoint so-and-so to office if the Representative will vote for such-and-such a bill, or vice versa. His method is to make known to the Representative that he wants such-and-such measure passed and that he expects his friends to vote for it. And it does not require a surgical operation to convince the average Representative that the President gives tit for tat. No President will consciously urge a Representative to vote against the interests of his constituents or the public sentiment of his district. President Roosevelt has too much sense and diplomacy to do that, but there is always a large number of members without convictions on certain subjects and whose constituents are not involved on one side or the other, or are divided in opinion, and these the President will always endeavor to reach.

"Probably no President has used his official influence, and, indirectly, the patronage of his office, to influence legislation, so much as President Roosevelt, because he has had a determination to secure certain legislation which he believes to be required for the welfare of the country, and, to use a slang expression, has not 'wasted a trick' since the beginning of his administration. He is the most energetic and accomplished lobbyist ever seen in Washington. He is the first President to openly declare his attitude toward certain measures of importance before they are acted upon by the Congress. Many and many a time has he told Senators and Representatives that they had better drop certain bills they have introduced because he will veto them. When Senator Perkins, of California, called on him the other day the President immediately 'jumped on him' for introducing a bill to exclude Japanese immigrants, and frankly told him that it would never get by the White House. He has made similar threats and given similar warnings many a time. There need never be the slightest doubt about the attitude of Theodore Roosevelt toward any proposition or his opinion on any subject. All you've got to do is to ask him. He has no secrets. Just press the button and he'll do the rest."

NEW CAR SERVICE RULES FOR CANADA.

Railroads and Shippers Agree on Regulations to Govern in Every Part of the Dominion.

The following car service rules for the Dominion of Canada were agreed upon at a recent conference between representatives of shippers and carriers:

No. 1.—All freight in carloads, or less, handled by shippers or consignees is subject to a car service charge of \$1 per car, per day of twenty-four hours, or part thereof, if not loaded or unloaded within forty-eight hours.

Exception.—Twenty-four hours additional will be allowed on cars loaded with coal and coke, in bulk; boards and deals

No. 2.—Cars delayed under load beyond free time for any reason for which shippers or consignees are responsible, will be subject to the car service charges.

No. 3.—On cars placed before 12 o'clock, noon, free time begins at noon; if placed after 12 o'clock, noon, free time begins at 7 o'clock a. m. following. Cars to be accessible at all times during the period allowed for loading and unloading. Time lost through interruption, for which the railway is responsible, to be added to the free time allowance.

No. 4.—No charge will be made for Sundays or legal holidays.

No. 5.—When, owing to wet or stormy weather, loading or unloading is temporarily impracticable, agents will extend the free time allowance so as to give altogether the full free period of suitable weather. Agents must immediately report particulars to the manager, and note in their daily reports, "Waived Rule 4," opposite each car affected, giving dates on which the car service charge has not been assessed.

No. 6.—When, owing to irregularities in transportation, cars have been "bunched" and are tended to the consignee in numbers beyond his ascertained ability to unload within the unauthorized free time, he shall be allowed such additional time as may be necessary to unload the cars so in excess, by the exercise of due and usual diligence. The agent must at once report the particulars to the manager and obtain his ratification.

No. 7.—When both cars and tracks are owned by the same private party, no charge will be made.

No. 8.—Consignees must be promptly notified of the arrival of their freight, and will be held to have been notified when notice of arrival is given at their address or place of business, or if notice is mailed to the address given on the way bill, consignee will be held to have been advised at 7 a. m. of the day following.

No. 9.—Twenty-four hours will be allowed to consignee, after notice of arrival, in which to pay charges, if any, and give orders for special placing or delivery. If not ordered within that time, car will be considered as for public team track delivery, and will be placed accordingly, and if not unloaded within the free time will be subject to the car service charge. Twenty-four hours additional will be allowed for clearance of customs where the destination is a port of entry. Where the destination is not a port of entry, forty-eight hours will be allowed for clearance of customs at the outside port of entry.

No. 10.—The extra time after notice of arrival for paying charges and ordering will not apply on cars for which agents have previous or standing orders or arrangements for placing for regular delivery on designated tracks or private sidings.

No. 11.—The delivery of cars to private tracks shall be considered to have been made either when such cars have been placed on the tracks designated, or when they would have been placed but for some condition for which shipper or consignee is responsible.

No. 12.—If, after placing, cars are ordered to another siding on the same road to complete loading or unloading by the same shipper or the same consignee, and no switching or reconsigning charge is made, the free allowance will be computed from the original placing, less the time occupied in replacing the car.

No. 13.—If the car is reshipped or reconsigned, the original consignee shall pay \$1 per car, per day, or part thereof, for all time in excess of the period allowed by these rates, so that forty-eight hours' free time may remain to the party taking delivery.

No. 14.—Should a switching road give notice that it is unable to receive cars for private sidings, owing to conditions for which shippers or consignees are responsible, then any railway having cars for such consignees must so advise them. Car service will accrue until the cars are accepted by the switching road, and will be collected by the railway which is holding them.

No. 15.—Cars held in transit for inspection, cleaning, bag-

ging, completion or change of load, change of destination, etc., and detained over the time allowed for such purpose, will be subject to car service charges, which must be billed forward as directed by the accounting department. If such shipments are transferred to other cars, the car service will follow on the cars to which transfer is made. The forwarding agent, or in the case of change of destination, the agent by whom arranged, must make the following notation on the bill of lading: "Subject to car service charges at ____." The amount must also be inserted in the "back charges" column of the bill of lading, where practicable.

No. 16.—So called industrial, logging or private roads handling cars for themselves or other parties, must be charged car service on all cars delivered to them from the time placed upon the interchange tracks until returned thereto, allowance being made for the time necessary to perform the switching service (not to exceed twenty-four hours) in addition to the free time herein authorized.

No. 17.—Cars must not be held short of the destination for the purpose of evading these rules. Loaded cars held back for cause must be reported to the manager.

No. 18.—When cars are delayed or refused by consignee because of alleged incorrectness in the railway weights or charges, car service must be collected if charges or weights are found to be correct.

No. 19.—Agents must in all cases collect car service charges as soon as accrued. Should payment be refused, agents will withhold delivery, either by sealing or locking car, or placing it where it will not be accessible.

No. 20.—When the contents of a car are apparently not worth the combined freight and car service charges, and consignee fails to take delivery, the agent must wire the manager for instructions.

No. 21.—All complaints, disputes and uncertainties which may arise under these rules must be referred at once to the manager. The manager may reduce or cancel the charges should he consider that the circumstances justify such action. Claims should be filed with the manager direct, and must be accompanied by the receipted bills for the amounts paid.

According to the information contained in letters to the Editor from John R. Marlow, manager of the transportation department of the Canadian Manufacturers' Association, these rules have not as yet been approved by the board. In March last complaints and objections to the present demurrage rules were heard by the board at Ottawa, and at the conclusion of the hearing the representatives of the Grand Trunk and the Canadian Pacific intimated that they were prepared to meet representatives of the shippers and agree upon demurrage rules which would be mutually acceptable. The rules printed above were drafted by a joint committee representing the Canadian Car Service Bureau and the Canadian Manufacturers' Association. They were then submitted to the Board of Railway Commissioners for approval, the railways advising the board that the new rules were agreed to for the territory east of Port Arthur only. On receipt, the Board of Railway Commissioners issued a circular letter of information to all the principal boards of trade.

During September the board held sittings at Winnipeg, New Westminster and Vancouver, and invited any one interested to express his views on the subject. A great deal of evidence was taken at Winnipeg, where the railways have a rule in effect which reduces the time for unloading cordwood, sand, gravel and stone to twenty-four hours. Some of the Eastern boards of trade have communicated their views with regard to demurrage charges and the rules under which they should be applied, if at all, to the Board of Railway Commissioners, and it is understood that the latter will give shippers at some of the principal

Eastern points a further opportunity to deal with the question at public hearings before any rules are finally approved of. The Board of Railway Commissioners, in its report and opinion *re* Duthie and Grand Trunk Railway Co., dated October 17, makes use of this language:

"Several other complaints against these demurrage or car service charges and the rules of the Car Service Association have been made to the board. We expect shortly to determine whether any such charges are or are not to be allowed in the future, and, if allowed, what are to be the rates and the rules governing their imposition. In doing this, the board should endeavor to ascertain what rates will be reasonable, and to arrive at reasonable and just conclusions between the railway companies and the public, quite irrespective of any association or combination, past or future."

A large number of shippers in Canada hold very pronounced views in favor of reciprocal demurrage charges, but it does not appear that under the Railway Act the Board of Railway Commissioners has power to enforce them. Therefore, special legislation by the Dominion Parliament would be necessary before reciprocal demurrage could become effective in Canada.

The proposed rules do not include a provision for the average arrangement which is in force in some parts of the United States. Mr. Marlow was hopeful that the Manufacturers' Association could secure some such arrangement, but it appears to be the opinion, after discussion, that this form of dealing with demurrage regulations did not assist in the prompt movement of freight equipment, which is supposed to be at the base of any reasonable demurrage regulations. "If the average arrangement were put in effect for one set of shippers, it must be given to all," says Mr. Marlow, "and under such arrangement it would be possible to delay the unloading of a car three or four days, and by effecting prompt unloading of some other cars avoid the regulation or penalty which should attach where the unloading service is not accomplished with reasonable promptness."

It is difficult to say what the Board of Railway Commissioners will do. No doubt it will frame rules which will be calculated properly to safeguard the interests of the public. Information is being placed before it from various sources, and it is thought that, after the close of the year, it will set about framing rules based upon the information which it has gathered since the subject was first reported to the board.

CANADIAN LUMBERMEN AROUSED.

Protest Strongly Against the Railway Plan of Changing From a Foot Rate to a Pound Rate.

Canadian lumbermen are up in arms against a proposition of the railways to change the lumber rates from Ottawa to New York by the Albany-Williams Line from \$3 per 1,000 feet to 11 cents per hundred weight, which the railroads claim is equivalent to the foot rate. At a conference between the lumbermen

and the railway men held in Ottawa the lumbermen entered a decidedly strong protest against the change. They claim that no two scales would weigh alike, and that there would be no definite way of knowing in advance what the freight charges would be, and intimated that if the railways made the change all lumber would be forwarded to New York by boat.

TEXAS LUMBERMEN WANT LOWER RATES.

At a Hearing Before the Railroad Commission They Ask for a Twelve and a Half Per Cent. Reduction.

The hearing granted by the Texas Railroad Commission, at Austin, on the application by the Farmers' Union for a reduction in the present lumber rate, was largely attended and was characterized by some very sharp debate. The application asks for a 12½ per cent. reduction.

Captain Farley, of the Dallas Freight Bureau, was the spokesman for the petitioners. He said, in view of the fact that the railroads now carry lumber from Orange to Dallas, over 300 miles, for 16 cents, he supposed the Commission would not bother further with its proposed 17-cent maximum. He therefore submitted a proposed tariff, beginning with 4 cents for 25 miles or less for one line, and 5 cents for two or more lines, and 12½ cents for 350 miles, one line, or 13 1-3 cents for two or more lines. He was cross examined by various attorneys for the railroads.

Several lumbermen were called as witnesses and then a number of railroad officials testified. At times the hearing assumed something of a political phase. The Commission is expected to use some time in reaching a decision on the application.

Grosscup Plan Could Not Be Improved On.

To the Editor of Freight:

SIR—I have read with interest Judge Grosscup's forceful argument, and do not see how the plan proposed can be improved upon. The truth of Judge Grosscup's statements is well known to most State railroad commissions, as their experiences are somewhat similar to those of the Interstate Commerce Commission. The number and diversity of State cases are very small compared to the number which would come before a national organization, and in Louisiana delays are somewhat avoided by the constitutional provision that the Railroad Commission's cases shall be tried in preference to all other cases before the court. But even with this provision delays in obtaining final judgment are often so great as absolutely to destroy the efficiency of the contested order.

W. M. BARROW;

Secretary Railroad Commission of Louisiana.
BATON ROUGE, La.

Subscribers who do not receive their copies of FREIGHT promptly each month will oblige the publishers by acquainting them with that fact without delay.

COMPLAINT OF THE NATIONAL LUMBER DEALERS.

Hearing Before the Interstate Commerce Commission Leads to a Conference at Which the "Stake" Issue May Be Settled.

THE hearing of the lumber interests of the country before the Interstate Commerce Commission in Washington, in connection with the complaint of the National Wholesale Lumber Dealers' Association against the Pennsylvania Railroad and allied lines and the Atlantic Coast Line and connecting roads, proved very interesting.

The complaint alleged that the railroads compelled the lumbermen to pay for equipping flat cars carrying lumber with the necessary stakes, ties, etc., to keep the lumber in place, and in addition charged freight on same to the amount of 500 pounds, all of which the shippers contend is an unreasonable rate.

It was announced before the discussion opened that the Southern roads, since the filing of the petition, had reduced their freight charges by 500 pounds per car, so as to allow for the freight on the stakes. It was also stated by one of the representatives of the Eastern roads that, at a meeting of the freight representatives, they had taken similar action.

Among the witnesses were:

Lewis Dill, of Lewis Dill & Co., Baltimore, Md., and president of the National Wholesale Lumber Dealers' Association.

Robert W. Higbie, 45 Broadway, New York.

F. R. Babcock, E. V. Babcock & Co., Pittsburg, Pa.; Babcock Lumber Company, Ashtola, Pa., and Babcock Company, Babcock, Ga.; chairman of the Transportation Committee, National Wholesale Lumber Dealers' Association.

E. P. Gill, of W. D. Gill & Son, Baltimore, Md.

George F. Craig, of George F. Craig & Co. and George F. Craig & Sons, Philadelphia, Pa.

B. Franklin Betts, of Charles M. Betts & Co., Philadelphia, Pa.

H. W. Graham, of Stuart Lumber Company, Brinson, Ga.

J. Currie, Connellsville, Pa.

J. H. Babb, Mill Creek, W. Va.

W. L. Barclay, Laquin, Pa.

W. M. McCormick, Philadelphia, Pa.

Capt. W. L. Burton, Strader, La.

John A. Bruce, Strader, La.

E. J. Eddy, traffic manager, National Wholesale Lumber Dealers' Association, New York.

D. W. Mills, Cleveland, Ohio.

Statement by Counsel Ross.

Walter W. Ross, counsel for the complainant, made this statement:

The complainants represent upward of 12,000 firms and persons (and 20,000 others who are equally interested) engaged in the manufacture, sale and shipment of about 100,000,000 tons of lumber of forest products annually, in various parts of the United States.

The defendants' railroad companies require the lumber shippers to equip flat and gondola cars loaded with lumber

with car stakes, racks or braces to keep the lumber thereon from falling from the cars while in transit. Most of the defendant railroad companies also require the lumber shippers to pay freight on the car equipment furnished by them to retain the lumber in position and to protect the train from accident.

The complainants contend that the charge of the railroads for transporting the lumber shipped on flat and gondola cars, plus the cost to the shipper of furnishing the necessary car equipment to protect the lumber and the train, plus the freight on such shipment, is the rate, and that such rate is unreasonable and unjust within the meaning of the law, and that unlawful discriminations pertaining to such shipments of lumber are practiced by the defendant railroad companies.

Approximately 100,000,000 tons of lumber or forest products are transported annually by rail in various parts of the United States. One hundred million tons of lumber means about 5,000,000 carloads annually, of which about 3,000,000 carloads are transported in box cars and the remaining 2,000,000 are transported in flat and gondola cars.

There is only one other commodity, to wit, bituminous coal, which furnishes a larger tonnage of shipment to the railroads than forest products.

The freight rate between the same points on a box car loaded with lumber is the same as on a flat or gondola car loaded with lumber, notwithstanding the fact that it costs the shipper from \$4 to \$6 or \$7 more to load and equip a flat or gondola car with lumber, according to the requirements of the railroads, including the freight on such equipment.

The defendant railroads require the person shipping lumber on flat or gondola cars to equip them with not less than four stakes, 4 inches wide by 5 inches deep, on each side of the car, and necessary lumber to hold the stakes in proper position. These stakes, clamping pieces, bearing pieces and braces must be sound, straight grained lumber, hardwood preferred, and free from knots.

Gondola cars must have six stakes, not less than 3 inches wide by 4 inches deep, on each side of the car, properly bound together.

Burden on Lumber Shippers.

These stakes, together with binders, nails and the labor of attaching same to cars, cost the shipper from \$4 to \$6 or \$7 per car, and in addition to this the defendant railroad companies require the lumber shippers to pay freight on this equipment furnished by the lumber shipper, which weighs from 700 to 1,000 pounds, which freight on the average interstate shipment amounts to about \$1.50 per car, and when multiplied by 2,000,000 cars means an added expense of \$2,500,000 to the shippers annually for freight on equipment which ought not to be furnished by the shipper, and when we add to the freight on the equipment furnished by the shipper the cost of such equipment to the shipper of from \$4 to \$6 or \$7 a car on 2,000,000 cars means that an unjust burden of from \$8,000,000 to \$10,000,000 a year is placed upon persons shipping lumber on flat and gondola cars.

It is but fair to state, however, that some of the defendant railroad companies are not so rigid in their requirements of the character of stakes to be furnished by the lumber shippers, and in such instances the cost is less to the shipper, nor do all of the defendant railroad companies require the shipper to pay the freight on the equipment furnished by them, for some of the defendants make an allowance of 500 pounds for such equipment on each of the cars, and I have been informed that one of the defendants, the D. L. & W. R. R. Co., makes an allowance of 1,000 pounds for such equipment.

It is the legal duty of common carriers to provide equip-

ment necessary to transport commodities which are offered to them for shipment, and in substantially all instances the defendant railroads provide the necessary equipment to transport the various commodities. They provide freight cars properly equipped to transport cattle, they provide freight cars properly equipped to transport coal, and freight cars specially equipped to transport coke, and freight cars equipped to transport grain, and furnish the temporary grain door with such shipments. Why, therefore, are they justified in refusing to provide the equipment necessary to transport lumber in safety to the shippers and to the operation of the trains of the railroad companies.

We contend that it is the duty of the defendants to furnish cars which are properly equipped to transport lumber, or, in the event of their failure to do so, to make an allowance to the shipper equivalent to the cost to him of the temporary equipment and the freight thereon.

We are aware that we will be confronted with the statement from the railroads that it is impracticable to equip flat or gondola cars properly in a permanent manner to transport lumber, but I suggest in passing that if a judgment shall be ultimately entered in this cause requiring the defendants to either furnish the necessary equipment or make an allowance to the shipper of the cost to him of temporary equipment, plus the freight thereon, that the defendants will soon devise a satisfactory permanent equipment for such cars to be used in transporting lumber, for if it is true that approximately 2,000,000 carloads of lumber are transported annually on flat or gondola cars, and that between 200,000 and 300,000 cars properly equipped would annually perform this service, it would mean an economic saving of \$7,000,000 or \$8,000,000 a year which is now lost. In other words, if the annual cost of the temporary equipment of these flat and gondola cars is \$7,000,000 or \$8,000,000 a year, cars permanently equipped to transport this traffic would result in an annual saving of substantially this amount.

Rigid Enforcement of Rules.

But there is another side of considerable passing interest. The defendants are more rigidly each year enforcing their rules as to the strength and character of stakes furnished by the shipper to hold the lumber in place on the cars. This is because many accidents have resulted from defective stakes used to hold the lumber in place on the cars. One of many such accidents from the breaking of lumber car stakes resulted in the loss of the lives of sixty-five passengers.

Some of the defendants require the lumber shipper to furnish oak car stakes, with dimensions 4x5 inches, to hold the lumber in place and protect the train. Such stakes cost the shipper from \$6 to \$7 a car each trip. It has been estimated that such a car devoted to the transportation of lumber will make from twelve to fourteen such trips a year, making a cost for such temporary equipment from \$70 to \$80 per carload per year. It certainly would be much cheaper for the lumber shipper to furnish a set of steel stakes, which could be used over and over again, but if it is proper for the railroad company to require the lumber shipper to furnish such stakes, why not go a step further and require him to furnish the car also?

It would be just about as reasonable for a railroad company to furnish a person desiring to ship cattle a flat car and tell him he must provide the necessary stakes and ropes to tie his cattle on the cars, as it is to furnish such a car to the lumber shipper and require him to furnish the equipment and keep the lumber in place and protect the train from accident.

The railroads provide the shippers of cattle, grain, coal, coke and other commodities cars properly equipped. I can find no sound reason which warrants such discrimination against lumber shippers.

It is certainly not because coal, coke, grain, cement, etc., pay higher tariffs and are therefore entitled to better car

equipment. for it is well known that lumber bears a higher tariff than any of these commodities and is a far better earner than any of them for the railroad.

Let us make a few comparisons of these rates:

A carload of lumber, for instance, of 40,000 pounds, shipped from East St. Louis, Ill., to Wilkesbarre, Pa., yields a revenue to the carriers of \$96. To this must be added the cost to the shipper of the temporary equipment and the freight on such equipment, which brings the rate on that carload of lumber to upward of \$100. In addition to this the lumber is loaded by the consignor and unloaded by the consignee without expense to the carrier, and the liabilities of the carrier for loss or damage to the shipper is substantially nothing.

A carload of lumber, having been unloaded at destination by the consignee, is turned over to a coal operator, loaded with anthracite coal, and started on its homeward journey to East St. Louis. For this transportation service the carrier charges the coal operator \$80 for transporting 40,000 pounds. The lumber shipper paid 25 per cent. more for the same service under substantially the same circumstances and conditions.

And so a carload of lumber shipped from Mobile, Ala., to Cairo, Ill., having 30,000 pounds, yields the carrier \$48. The same car is loaded at Cairo and returned to Mobile with wheat, corn, barley or oats for \$39, or if loaded with brick or clay is transported to Mobile for \$30, or if loaded with sewer pipe or drain tile is transported for \$30, or with cement for \$42.

Importance of the Business.

And so, upon a comparison of the lumber rates with the rates on other similar commodities throughout the country which we will present before your honors, it will be found that the lumber rates are from 20 to 100 per cent. higher than on such other similar commodities.

The cost of the transportation of lumber from mills to market varies from 33 to 50 per cent. of the market price to this commodity. The influence of the cost of transportation upon the market price of lumber is of so broad a character that it is properly national.

Lumber is produced in commercial quantities in nearly every State of the Union. It competes not only with itself but with iron, steel, cement, stone and brick. Its great competitor, however, is brick, which is produced in nearly every community. It is safe to assert that lumber pays a higher rate per carload than any great commodity. Many higher classes of freight yield less revenue per carload than lumber, and substantially all other commodities are carried in special equipment provided by the common carriers.

We hope to show the Commission and to the defendant railroads the importance of the business of the transportation of this great commodity, lumber; and we believe that all who are parties to these proceedings will become convinced, upon giving the questions involved the consideration due to their importance, that the contention of the lumber shipper that it is the duty of the carriers to furnish the equipment to transport this commodity, is just and right.

The question is still undecided, but an attempt to compromise the issue will be made at a conference between the parties at interest, to be held in Washington February 1. Five of the complainants and five representatives of the carriers will be present, accompanied by their attorneys. If no agreement is reached it is understood that the hearing before the Commission will be continued at a future date.

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BEFORE THE INTERSTATE COMMERCE COMMISSION.

CALENDAR OF HEARINGS.

January 26, 1906, Chicago, Ill.

R. R. Shiel & Co. vs. Illinois Central Railroad Company et al.

February 1, 1906, Louisville, Ky.

Railroad Commission of Kentucky vs. Louisville & Nashville Railroad Company et al.

COMPLAINTS FILED.

Fisk Rubber Company vs. Atchison, Topeka & Santa Fe Railway Company et al.

Unjust classification of solid rubber tires in packages and bicycle and single tube and double tube types of rubber tires, crated or boxed.

Fort Smith Traffic Bureau vs. Pittsburg, Cincinnati, Chicago & St. Louis Railway et al.

Alleged unjust advance in rates on pressed glassware, including tableware, lamps and lamp chimneys.

Village of Goodhue, Minn., vs. Chicago Great Western Railway Company.

Alleged violation of the long and short haul clauses in rates on wheat and barley.

HEARINGS HELD.

January 3, 1906, Fort Wayne, Ind.—A. J. Phillips Company vs. Grand Trunk Western Railway Company et al. Alleged unreasonable rates on wire screen doors and windows in carloads.

January 3, 1906, Fort Wayne, Ind.—McMillen Grain Company vs. Cincinnati Northern Railroad Company. Unjust discrimination in distribution of cars at Cavite, Ohio, for interstate shipments of hay.

January 3, 1906, Fort Wayne, Ind.—Weil Brothers & Co. vs. Pennsylvania Railroad Company et al. Unreasonable rates on "wool in the grease" from Philadelphia, Pa., to Fort Wayne, Ind.

January 3-4, 1906, Fort Wayne, Ind.—James E. Eaton vs. Cincinnati, Hamilton & Dayton Railway Company. Unjust discrimination in distribution of cars at Grover Hill, Ohio, for interstate shipments of hay.

January 5-6, 1906, Louisville, Ky.—Railroad Commission of Kentucky vs. Louisville & Nashville Railroad Company et al. Unreasonable rates from points east of the Mississippi and north of the Ohio rivers to Owensboro and Henderson, Ky.

January 10, 1906, Washington, D. C.—National Wholesale Liquor Dealers' Association vs. Atchison, Topeka & Santa Fé Railway Company et al. Unreasonable rates on whiskey in wood in carloads.

January 11, 1906, Washington, D. C.—National Wholesale Lumber Dealers' Association vs. Atlantic Coast Line Railroad Company et al. Unreasonable rates on lumber through racking of cars at shippers' expense.

January 11, 1906, Washington, D. C.—National Wholesale Lumber Dealers' Association vs. Pennsylvania Railroad Company et al. Unreasonable rates on lumber through racking of cars at shippers' expense.

Rates on Cotton Piece Goods.

The Commission has recently decided two cases brought by George J. Kindel, one against the Boston & Albany Railroad Company and other carriers in through lines from New York, Boston and other Eastern points to Denver, and the other against the New York, New Haven & Hartford Railroad Company and the Chicago, Burlington & Quincy Railway Company. The decisions were prepared by Commissioner Clements.

In the Boston & Albany case complaint was made that the rate on cotton piece goods from New York, Boston and other Eastern points to Denver is unreasonable and unjust, and also unduly prejudicial as compared with the rate from the same points of shipment to San Francisco. Sections 1, 2, 3 and 4 of the act were alleged to be violated. The complainant further asserted wrongful discrimination through failure of the carriers to put in carload rates on cotton piece goods to Denver, other than duck and denims. Upon the carload rate question the Commission decides:

The fact that such a rating has been established on cotton piece goods from the East to Pacific Coast points because of water competition, and the fact that ducks and denims have been given carload rates to Salt Lake City and Denver to encourage manufacturing industries at those points, while elsewhere throughout the country the rate on cotton piece goods is the same for any quantity, do not indicate that the action of the defendants in denying a carload rating on tickings, drills and sheetings to Denver is unlawful. As to the reasonableness of the westbound rates on cotton piece goods, the Commission concludes as follows:

The present westbound rates from Chicago and river points on first class and cotton piece goods are slightly lower than in 1887, when the Commission was established; but, with the exception of the Missouri River rates to Denver, the relation between first class and cotton piece goods has in this time been fairly constant, the latter always being a substantially lower rate than first class. As an instance, first class rates have from New York to Chicago remained for that period practically at 75 cents per 100 pounds, while cotton piece goods from 1887 for nearly thirteen years, or until January 1, 1900, were for most of the time at 50 cents, then for two years at 65 cents, and on March 10,

1902, made 55 cents, at which point they now remain—20 cents below first class rates.

In 1889 from Chicago to Denver first class rates were \$2.30 and cotton piece goods \$2.05, or 25 cents below first class; and these rates have fallen to \$2.05 on first class and \$1.75 per 100 pounds on cotton piece goods—still a difference of 30 cents per 100 pounds in favor of cotton piece goods.

From St. Louis, Mo., first class rates to Denver in 1889 were \$2.10, and on cotton piece goods \$1.90 between the same points, or 20 cents difference in favor of cotton piece goods, while the present rates are \$1.85 for first class and \$1.60 for cotton piece goods, an increase in the differential to 25 cents.

But from Missouri River points the rates in 1889 were \$1.60, the present rates are \$1.25, or first class rates, on cotton piece goods. Everywhere else cotton piece goods are carried at lower than first class rates; everywhere else that first class rates have been reduced cotton piece goods have enjoyed a similar reduction, sometimes more, sometimes less; but between these points, by a singular exception, cotton piece goods are denied any differential below first class rates, though such a differential prevails in practically all other localities, save west of the Missouri River.

The transcontinental rates from the East to San Francisco being made in competition with rates by water cannot be used as a measure of reasonable rates for the service performed, it being held that when the competition is actual and active such reductions are forced upon the carriers by rail in order to secure the traffic. But while they are justified in thus reducing their through rates to a point below what would otherwise be a reasonable standard when forced by competition, even that situation does not permit them to transport merchandise at a loss and thus add to the burdens of intermediate points. They may not carry goods under any consideration below the actual cost of service and then make up the difference by unreasonably high rates on the same or any other traffic to shorter distance points.

Now, in the present case, the all-rail rate to meet water competition from New York to San Francisco is \$1 per 100 pounds, the vessels carrying the same goods between those points at 20 per cent. less than the railroad rates, or 80 cents. These rates are by the carload. When in less than carload lot the rate is \$1.50 per 100 pounds on cotton piece goods. It is ordinarily fair to assume that a rate adopted by the carriers pays the actual cost of service, for less than that they would not be justified in charging. The short line distance from Boston to San Francisco is nearly 3,400 miles, and by many lines much more, and the cost of carriage of cotton piece goods for that distance, it would seem, must be covered by \$1.50 per 100 pounds, or \$30 per ton.

Now, for the 2,000 mile haul to Denver, when it is considered that the carrier is saved the 1,400 to 1,600 mile haul over the mountain ranges, where fuel and labor are counted more expensive, it would seem that

the \$1.50 must pay a reasonable profit to the carriers, and it is our judgment that the rates in question should not exceed that. Surely a rate which pays expenses for a 3,400 mile haul will yield reasonable profits for a haul not much above half that distance when the service actually rendered is far the easier and cheaper half of the total haul.

Every reason which may be urged in favor of an extraordinarily high rate from the Missouri to Denver applies with equal or greater force to the mountain haul to the coast points, especially as to the extra cost of transportation. The higher the expense of service for this haul, which may be calculated as borne by the carrier, the greater margin remains above actual cost when the transcontinental rate of \$1.50 per 100 pounds on cotton piece goods is applied to a haul not more than half so long.

As we have seen, the rate to the Mississippi River from New York on cotton piece goods is 64 cents; from the Mississippi to the Missouri River is 35 cents, and from the Missouri River to Denver is \$1.25 per 100 pounds. In making a through shipment from New York to Denver the rate on cotton piece goods is the sum of the locals, or \$2.24 per 100 pounds, no reduction being made for the through haul of 2,000 miles.

The actual cost of service is ignored as an element of rate making in this method of charging and collecting the local rates for through shipments. The local rates are fixed by the carriers to cover all terminal expenses on the shorter hauls, charges and delays to the initial and terminal points, and it is not reasonable on a joint through haul, where these terminal delays and expenses are spared at the intermediate points, that such economy in transportation should not be shared by the shipper who must bear the burden of the long 2,000 mile haul, and it is unreasonable and unjust on the part of the carriers that the long, uninterrupted through route, even if no through rate is agreed to, should bear the full local rates.

As shown in the findings, there has prevailed for many years a general differential in favor of cotton piece goods under first class rates, between the principal markets in every direction and under all classifications. The notable exceptions have been from Missouri River points to Denver.

The rate per ton per mile on cotton piece goods from Boston and New York to Chicago and East St. Louis, the first 1,000 miles of the haul to Denver, varies from 1 cent to 1 cent and 2 mills. The rate per ton per mile on the same goods for the final haul from Missouri River to Denver is from about 4 cents to above 4½ cents—out of all proportion to the service rendered and the cost of service.

A higher rate per ton per mile is justified for the haul from the Missouri River to Denver than from Eastern points to the Missouri River. The conditions as to population, density of traffic, competition, and the many elements which enter into the cost and profit of transportation are different, and it would be unreasonable to demand, concede or prescribe like rates for

services that so widely differ. But these conditions are constantly approaching similarity. The population is making rapid strides, the traffic increases, wages, fuel and supplies are approaching Eastern standards in cost; the places of conditions are not parallel, but have approached each other in the last twenty years, and what may have been a justifiable difference in the cotton piece goods rate when the traffic first reached this Western territory becomes unreasonable as the causes for that difference disappear.

The rate between the rivers, first class, is 60 cents, and cotton piece goods, 35 cents; Chicago to St. Paul the rates are 60 and 40; St. Louis to St. Paul, 63 and 42; New York to East St. Louis, 87 and 64; Columbus, Ga., to Chicago, \$1.57 and 55 cents.

It is manifest discrimination when cotton piece goods have been for so long a period over so vast a territory carried at rates below the first class rates that from this one basing line, the Missouri River, the rates should without adequate reason be raised to first class. It is unjust to the locality and the traffic, and, though it may be difficult to compute all the elements which necessarily go to the finding of a rate reasonable in itself, it is seldom that from so many dates and points of comparison a rate is shown to be unreasonable as is this rate on cotton piece goods from Missouri River points to Denver.

It is out of alignment with rates everywhere else. With the rate to the Missouri River 99 cents from New York and Boston for a total haul of about 1,500 miles on cotton piece goods, it is palpably unreasonable that increasing that haul one-third, or about 500 miles, to Denver, should increase the rate by 125 per cent.

The result of this excessive rate between the Missouri River and Denver, and the use of full locals in making up the through combination rate from Boston, New York and other Eastern points taking the same rates to Denver, is to make the through rate excessive. As before stated, we think that the through rate to Denver, to be reasonable, should not exceed \$1.50. Our conclusion upon the facts is that the rates complained of are unjust and unreasonable, and that the defendant carriers be ordered to cease and desist from further charging and collecting the same.

The case against the New York, New Haven & Hartford Railroad Company presented the same issues as in the Boston & Albany case, and asked for reparation for an unreasonable charge on a specific shipment. The Commission says:

"Relief having been granted in the other case, so far as lay in the power of the Commission, and the carriers having been ordered to cease and desist from charging and collecting the unreasonable rate complained of, which this suit was really brought to illustrate, the Commission is of opinion that, under the circumstances and conditions shown to exist in this transaction, substantial justice will be satisfied with the establishment of a reasonable rate, and that an order of reparation is not required."

Reconsignment Rates on Hay.

A case decided by the Commission during the past month in an opinion by Chairman Knapp is entitled "St. Louis Hay & Grain Company vs. Illinois Central Railroad Company and Mobile & Ohio Railroad Company." It seems that the service of these carriers in handling reconsigned hay at and from East St. Louis is more expensive, as a general rule, if not invariably, than the service performed in case of shipments through East St. Louis, while the privilege of reconsigning hay from that point at a charge less than the established local rate is of substantial value to dealers in that city.

The hay in question comes in the first instance to East St. Louis, where a considerable part of it is sold for local use or for reshipment. In some instances, or from some points of origin, there are through rates to Southern destinations which are divided between the lines north and the lines south of East St. Louis as they may agree. More frequently, however, it appears that no through rates are provided, but the hay comes to East St. Louis on a local rate to that point, and if carried beyond takes a rate applicable in such cases. This is known as a reconsignment rate, and is invariably the same to a given destination without regard to the point of origin—that is, without regard to the local rate paid to East St. Louis. The reconsignment rate to Memphis is 10 cents in all cases, and to Mobile and New Orleans 17½ cents. There is also a local rate from East St. Louis to Memphis of 12 cents, and to Mobile and New Orleans of 20 cents, but as no hay originates at East St. Louis these local rates are seldom used.

The complainant asserts that on through shipments from points of origin to Memphis the carriers south of East St. Louis get 10 cents as their proportion of the through rate, which is exactly the same as their reconsignment rate, whereas on through shipments to Mobile and New Orleans the carriers south of East St. Louis accept 16 cents as their proportion of the through rate, while maintaining a reconsignment rate of 17½ cents to those points. Complainant claims that this difference of 1½ cents between the proportion of the through rate and the reconsignment rate to Mobile and New Orleans constitutes wrongful discrimination. The following rulings are made by the Commission:

The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection. In deciding the former case the Commission said:

"It is well understood that a through rate may properly be less than the sum of the locals to and from a divisional point. The mere fact, therefore, that these defendants make in connection with Northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved." (St. Louis Hay & Grain Company vs. Mobile & O. R. Co. et al., 11 I. C. C. Rep. 101.)

Nor is it unlawful for the defendants to maintain

reconsignment rates which are higher in some cases than their proportions of through rates. The service of the carriers in handling reconsigned hay is more expensive as a general rule, but not invariably, than the service performed in cases of through shipment, while the reconsignment privileges in question must be of substantial value to the dealers at East St. Louis. In no instance shown does the difference appear to be unreasonable or otherwise in violation of the regulating statute. The circumstance that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support the charge of unjust discrimination. Aside from the misuse of the reconsignment rate as stated in the findings, which is not likely to be repeated, we are unable to sustain the complainant's contention either as regards the facts or the law applicable thereto. An order will be made dismissing the complaint.

Rates to Griffin, Ga.

A case brought by the Griffin Grocery Company, of Griffin, Ga., against the Southern and Central of Georgia Railway Companies, decided by the Commission in an opinion by Commissioner Clements, shows the following:

Upon complaint of alleged unjustly higher freight rates from Chicago and St. Louis to Griffin, Ga., than to Macon, Americus, Albany or Dawson, Ga., it appeared that the three last named cities are situated at considerable distances from Griffin; that, while Griffin pays higher rates than those in force to such cities, there is no competition between them and Griffin for trade in common territory, and that Griffin's real difficulty is in the relation of rates to that point and Macon and Atlanta, between which points Griffin is located, and which enjoys much lower rates than either Americus, Albany or Dawson. The rates from New Orleans are for a longer distance to Griffin than to Americus, Albany or Dawson. Competition creates dissimilarity of circumstances and conditions affecting the transportation of traffic from the points of shipment mentioned to Macon and Griffin. In disposing of this case the Commission says:

"Following the ruling of the United States Circuit Court in *Brewer et al. vs. Central of Ga. R. Co.*, 84 Fed. 258, and that of the Supreme Court of the United States in later cases, and applying the law as thus construed to the facts presented in the record before us, we find no basis for an order condemning the rates in issue for undue discrimination. Under those decisions the dissimilarity shown to exist in conditions at Macon and Griffin is such as to leave no room for a finding of undue prejudice against Griffin or a violation of the long and short haul clause. It may be, however, that these rates to Griffin, which are all made by combination of the through rates to Atlanta and the local charges from Atlanta to Griffin, are unreasonable, but the evidence in this case is chiefly directed to the question of preference and discrimination as between localities, and is insufficient to warrant any finding or con-

clusion upon the reasonableness of the charge to Griffin."

Classification of Leather Scrap.

In an opinion by Commissioner Prouty, the Commission has recently rendered its decision in the case of M. Newman, of New York city, who complained against the New York Central & Hudson River Railroad Company and other carriers in Official Classification territory of the classification of leather scrap in less than carloads.

Leather scrap shipped in less than carloads has been classified by the carriers as third class since 1887, but in January, 1894, they limited such classification to scrap refuse from the manufacture of leather goods, and excluded strips or pieces cut from hide leather, and in January, 1905, such limitation was superseded in the carriers' freight classification by the words: "This rating will apply only upon scraps not available in the manufacture of leather goods." All leather scrap purchased by complainant contains leather pieces which can be used in the manufacture of leather goods, and the sole purpose of complainant in purchasing such leather scrap is to separate such pieces and sell them to persons having use for the various sizes and kinds. The effect of the new rule was to advance complainant's commodity from third to second class, which is the rating prescribed by the carriers for leather.

The Commission says that in the prosecution of his business the complainant gives value to a thing which would otherwise be thrown away, and in the production of this economy he should not be hampered by the exaction of unreasonable transportation charges. For sixteen years previous to January 2, 1905, the defendants carried his commodity at a third class rate. The Commission finds as a fact that this rate was sufficiently high, and concludes that its advance was unjust and unreasonable, and that the present rate imposed by the defendants is unjust and unreasonable.

It appeared that the defendant carriers relied upon the case of *Derr Mfg. Co. vs. Pennsylvania R. Co.*, 9 I. C. C. Rep. 646, and upon *Planters' Compress Co. vs. Cleveland, C. C. & St. L. R. Co.*, recently decided, 11 I. C. C. Rep. 382. In disposing of the case the Commission says that in the first of those cases it held that the defendant, in making its classification need not distinguish as between a blacking dauber brush with a wooden handle and one with an iron handle, and in the second that cotton was not entitled to a better rate simply because compressed to a greater density. In both of these cases the article was the same. In the case before the Commission the article in question is distinct. Leather scraps are not leather, although composed of leather; they are treated as a separate commodity, are bought and sold as a separate commodity, and no reason appears why the classification of one should control the other, nor why it is unreasonable to require these carriers to continue the same distinction in that classification which has been in effect for years past without occasioning embarrassment.

Classification of Electrical Apparatus.

In the case of Scheidel & Co. against the Chicago & Northwestern Railway Company and the Union Pacific Railroad Company, the Commission has rendered its decision in an opinion by Commissioner Prouty.

The "Scheidel outfit" is an electrical apparatus consisting of a Ruhmkorff coil, an interrupter, a small rheostat and two switches, fitted to a strong table. The parts are detachable and are shipped in separate boxed packages, except the table, which is crated. This outfit, which transforms an electrical current of low voltage into one of extremely high voltage, is used in medical and scientific work, including the use of the X-ray, and also in wireless telegraphy and in chemical works. The Western Classification places X-ray apparatus and scientific or medical instruments in double first class, and electrical apparatus, N. O. S., in first class. Complainant contends that their outfit should be treated as an ordinary electrical appliance and carried at first class rates. We take the following from the conclusions of the Commission:

"No more embarrassing questions are presented than those which arise upon the classification of a particular article. This is due to the fact that while the classes must be comparatively few, the articles embraced are almost innumerable and of infinite variety. It is perfectly evident that there is no reason why ordinary electrical machinery should be transported at the same rate which applies to the carriage of electrical contrivances used in medical and scientific work, and yet it is almost impossible to draw the line of demarcation between the two, and to say with confidence to which class certain parts of the apparatus of the complainant belong. We have found that the "Scheidel outfit" should properly be classified as X-ray apparatus, or as apparatus used for medical and scientific purposes; but if, in the future, the Ruhmkorff coil manufactured by the complainant should come to be used extensively for commercial purposes, or if some demand should arise for the extensive use of a piece of mechanism producing the high tension currents which this does, it might easily be true that the conditions surrounding the manufacture and use of that piece of apparatus would be such as to render it more nearly akin to the present high tension transformer and it might then be entitled to the same rating.

"It should also be noticed that we are comparing here the 'Scheidel outfit' with commercial electrical apparatus. No opinion is expressed as to whether the classification of dynamos, transformers and other electrical machinery as first class is just. We simply hold that the 'Scheidel outfit' is not entitled to the same rating which is applied to such electrical machinery. The complaint is dismissed."

Rates on Flour Over the Mobile & Ohio.

This case, brought by S. J. & S. Cannon, of Gordo, Ala., against the Mobile & Ohio Railroad Company, is decided by the Commission in an opinion by Commissioner Clements. The case involves the reasonableness of the rates on flour in carloads from St. Louis, Mo., Ava and Cairo, Ill., to Gordo over the Mobile & Ohio Railroad. The complainants' contention was based upon a comparison of the rates on flour by other lines from Evansville, Ind., and Louisville, Ky., to

Gordo and other points in Alabama on the line of the Mobile & Ohio and other roads, particularly the Southern Railway. Berry, a point on the Southern, was especially referred to as illustrative. It was contended by the complainants that the rates from Evansville and Louisville by the Southern Railway are 20 cents per 100 pounds to Gordo, and the same by the Southern to Berry and other points on that railway not far distant from Gordo; that the distances from Evansville and Louisville to said points of destination are much greater than the distances from St. Louis, Ava and Cairo to Gordo by the Mobile & Ohio, and that the rates of the Mobile & Ohio ought not to be more from St. Louis, Ava or Cairo to Gordo than those of the Louisville & Nashville from Evansville and Louisville to Berry and of the former to Gordo. The findings and conclusions of the Commission are indicated in the following abstract:

In the adjustment of rates as between places on its line, a carrier cannot rightfully ignore the relative cost of the respective services, but there are other matters equal in importance to that of the cost of service, and often more controlling, which must also be considered, and this includes competition of carriers and competition of markets.

It is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate, and these are to be considered in connection with the many other factors that enter into the adjustment of rates, but it does not necessarily follow that a rate is unreasonable because on the same or another road a particular kind of traffic is hauled a greater distance from a different point of origin at the same or a less rate.

Rates on flour from Louisville and Evansville by the Southern Railway and the Louisville & Nashville Railroad to Berry, Ala., on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo, Ala., on the line of the Mobile & Ohio, are less than those of the Mobile & Ohio from Ava and Cairo, Ill., to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the haul by the former is about twice the distance as that from Ava by the latter, and much greater than that from St. Louis by the Mobile & Ohio. The Commission holds that these facts do not warrant a conclusion that the flour rates from St. Louis, Ava and Cairo to Gordo are unreasonable.

The carriers' published tariffs to various points in Alabama, including Gordo, as well as those of the Louisville & Nashville, Southern and Illinois Central, to some points in Alabama, show in some instances charges per barrel of flour considerably less than double the rate per 100 pounds in sacks, while in other cases, as in the instance of Gordo, the barrel rate is materially in excess of double the rate per 100 pounds in sacks, and this notwithstanding the weight of a barrel of flour is substantially double the weight of flour as shipped in sacks. The rates on sack flour are commodity rates, and the evidence leads to the inference

that shipments of flour in barrels would be given double the rate on flour in sacks, although this may not correspond to the actual published rate on flour in barrels. On this point the Commission decided as follows:

This is manifestly contrary to law, and leads to confusion for one line of rates to be retained in published tariffs while others are in fact used on actual shipments, and so long as carriers in Southern Classification territory deem it necessary to retain class F in their classifications and publish rates applicable thereto, including flour in barrels, and at the same time publish commodity rates on the same article carried in sacks, there should be uniformly a just relation in such rates. Case retained with respect to the rates in question on flour shipped in barrels, unless same are changed to conform relatively to those, applies to sacks.

Convictions for Violating Interstate Law.

Last July, in pursuance of numerous complaints from shippers located at St. Louis, Cairo, Birmingham and other large centres, the Interstate Commerce Commission made an investigation at Louisville, Ky., con-

cerning the rates and practices in the billing of grain from Louisville, and in that investigation evidence was secured tending to show that a prominent grain firm in Louisville had been guilty of fraudulent practices whereby it obtained less than the carriers' published rates for the transportation of grain from Louisville to Southeastern points. Such evidence was reported to the Department of Justice, which Department promptly caused the matter to be brought before the Grand Jury in the United States District Court for the Western District of Kentucky. Thereupon indictments were returned against two members of the firm, Sebastian Zorn and Thomas G. Williams, and one of the firm's employes, Jesse A. Bushfield. Recently these defendants pleaded guilty and were fined \$1,025 each.

As a result of the investigation made by the Commission, there are still pending before it questions pertaining to the regulation of the rebilling practice and rates. These are also being considered by the parties in interest with a view to voluntary adjustment, and if not so adjusted, the matters involved must be decided by the Commission.

Would Make All Freight Mail Matter.

A General Freight and Passenger Post. Solution of the railroad problem. Cowles, fourth edition.

The object of this work appears to be twofold: First, to show that the Government pays the transportation companies an exorbitant rate for transporting the mails, is subjected to various subterfuges concerning average weight of the mails, and, at the same time, purposes to apply the principles of the business of the Post Office Department to the transportation of freight. Concerning freight rates the author emphatically approves the statement that "of all the unscientific things in the world, railroad rate making takes precedence. The whole scheme, so far as yet developed, is the veriest jumble of guesswork, opinions, prejudices and self interests that could be imagined, and it is constantly changing."

The conclusions drawn by the author, and which are essential to the following out of the scheme, are as follows:

First—Railways are post roads and are, therefore, subject, both as to State and interstate commerce, to the eighth section of the First Article of the Constitution of the United States.

Second—Railway trains are post wagons, and the Post Office can only fulfill the object of its being when these post wagons are entirely subject to its jurisdiction.

Third—The transportation of persons and property is as legitimate a function of the Post Office as is the transportation of letters.

The kinds of freight under the postage scheme are to be local, express and fast. And the time for loading carloads by the Department of first is forty-eight hours; less than carloads, eight hours daily; time for transportation, for distances not exceeding 100 miles,

twenty-four hours; on express freight the speed is to be 200 miles per day; fast freight will be forwarded by passenger trains. The postage for carload freight from any point within the railroad system of the Post Office is to be \$6 per haul for box cars; \$5 per haul for open cars.

It is said that the book was written "for the purpose of presenting to Congress and to the public a simple and practical solution of the railway rate problem." The original edition of this work was printed in 1896, when certain prophecies concerning the adoption of the plan proposed by the author were made, and it was stated that they would be accomplished by 1900. That they have not been is well known. While the work may provide a simple solution for the railway problem, it is very difficult to find wherein the simplicity exists. The work is one far ahead of the times.

An Indictment to Be Quashed.

After the cases pending in Chicago against the big packers have been disposed of, the indictments against Joseph Weissenbach, attorney for the Schwarzschild & Sulzberger Company, and others connected with it, will be quashed by the Government. Whether this further leniency by the Government toward the Schwarzschild & Sulzberger Company is because of assistance given toward the indictment of officials of the Alton and Burlington roads, or because Attorney Weissenbach and others of the Schwarzschild & Sulzberger Company were indicted without warrant, remains to be disclosed.

"If the subscription price of FREIGHT was \$25 a year, I should consider it most reasonable. It is worth much more than that to me."
—A Subscriber.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES.

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Law Books on Shipping.

To the Editor of Freight:

SIR—Can you refer us to a publisher of a law book on shipping, and giving the laws of the various States covering the rights of transportation companies to send goods to storage and sell for charges? Also, giving their obligations as to tracers and as to notifying shippers where goods are left in a depot by consignee. To illustrate one of the points we want to cover: We make a shipment properly, packed, boxed, marked and billed; it goes through to destination and billing is lost by the transportation company. They refuse to deliver the goods to the consignee without the original bill of lading. They claim that they have authority to do this. This makes most consignees sore and they purchase the same goods from another concern and leave the first shipment in the depot to stay. Naturally, it is impossible for a shipper to get judgment against consignee in a local court when he has not received any goods, especially in cases where consignee has acted in good faith. It has not been customary for the transportation company to demand bill of lading from him, so he does not preserve the bill of lading that we sent with the invoice and is not in a position to present same on demand. If we were advised as to the existing state of affairs we might be able to help some to straighten the matter out, but we do not know anything about it until consignee's account becomes due, then, upon investigation, we find that the transportation company has sold the goods for charges, and we are left to whistle when we have not been at fault in any way. The railroad company insists that consignee is not entitled to the goods until he surrenders a bill of lading. Naturally, we ask why we were not notified when the shipment was left at destination unclaimed, and are advised by the railroad company that they are not obligated to notify shippers that a shipment is on hand at destination refused; that their contract is fulfilled when the goods are delivered to destination; that the only person they are supposed to notify is the *owner* of the goods, and that the goods belong to the man whose name is marked on the top, and he is the man they notify. We cannot understand why, if the goods belong to the man whose name is marked on the top of the box, the railroad company will refuse the delivery of the goods to him without the bill of lading.

We run across lots of hard propositions like this, and would like to get hold of a good law book that deals with rights of shippers, consignee and railroad companies, in instances of this kind.

If you can serve us by furnishing us with the names of publishers of such a book we will appreciate the favor very much.

THE E. E. SUTHERLAND MEDICINE COMPANY.
PADUCAH, Ky., December 15, 1905.

We think you will find the best work to cover such cases as you mentioned in your letter that of Hutchinson, second edition, by Mechem, Law of Carriers, Callaghan & Co., Chicago. These publishers have other works, and if you care for something larger they could supply it. For use in a business office, however, I think you will find this adequate to meet your wants.
—[Ed.]

To the Editor of Freight:

SIR—Referring to the new Official Classification No. 27, we notice on page 18, note 1, that the words "not negotiable" should be printed on the face of each uniform B/L, shipping order and memo. acknowledgment for the protection of the carriers under certain State laws, but these words on uniform B/L's should, for the accommodation of shippers desiring to make the collateral use thereof, be omitted or erased and initialed (see condition No. 8 Uniform B/L) by carrier's agent if the property called for by the Uniform B/L is consigned to order (see condition No. 9 Uniform B/L). Condition No. 8 states that any alterations, additions, etc., without special notation thereon by the agent would make the same void. As 90 per cent. of our shipments are "to order" shipments, we desire to inquire whether these new provisions of the Uniform B/L must be carried out. You will recall having advised us that we should erase the words "not negotiable" on the receipts which we used, and we have been doing so accordingly ever since. Although this classification is supposed to go into effect from the first of the year, we have not made any alterations on our receipts.

Your early advices in the matter will greatly oblige.

Yours truly,

THE BRUNSWICK-BALKE-COLLENDER COMPANY.

Per Traffic Manager.

NEW YORK, January 8, 1906.

The present situation in regard to the Uniform Bill of Lading is somewhat hazy by reason of the fact that the language is under consideration by a committee consisting of the representatives of the shippers, carriers and bankers. B/L in Official Classification No. 27, effective January 1, 1906, does not have the words "not negotiable" upon same. There is, however, a provision that the words should be printed on the B/L for the protection of carriers under certain State laws. The proper way to avoid the provision concerning erasure as specified in Condition 8 of the B/L would be to have the words "not negotiable" stricken out and the alteration initialed by the agent.

This rule would apply to a change in any printed document, or an addition to any document, as it would indicate that both parties had agreed upon the change.
—Ed.

Shippers, Carriers and Banks.

To the Editor of Freight:

SIR—Recently I purchased of J. Brothers a quantity of sacked rice; same was shipped on order bill of lading, and draft had been discounted at initial bank. Upon arrival several sacks were missing and rice was not of the quality contracted for. During the time the rice was in transit J. Brothers went into bankruptcy. Have we recourse against the bank?

H. & B. Co.

If it can be proven that the sacks which were lost was due to the negligence of the carrier, you will have no difficulty in recovering.

The question whether or not you can recover from

the bank for deficiency in quality and quantity has been decided both ways. In the case of *Landa vs. Lattin*, 19 Tex. Civil Appeals 246, the consignee was allowed to recover from the bank, the court holding that, by discounting the draft the initial bank became a party to the contract between vendor and vendee. This case has been approved by the Court of North Carolina in *Finch vs. Gregg*, 126 N. C. 176. It is very doubtful if the doctrine of these two cases would be followed in the United States courts or in the courts of many of the States. Other cases which have bearing upon it are: *Eufaula Grocery Company vs. Bank*, 118 Ala. 408; *Searles Bros. vs. Smith Grain Company*, 80 Miss. 688. Contrary decisions are: *Blaisdell vs. Bank*, 75 S. W. 292; *Tolerton vs. Bank*, 112 Iowa 706; *Schlichting vs. Railroad Company*, 96 N. W. 959; *Hall vs. Keller*, 64 Kan. 211.—[Ed.]

Railroad Must Observe Tariff Rate.

To the Editor of Freight:

SIR—Answering your favor of the 16th, it is not a question of a divided rate; it is a question of change in the classification. There was no change made in the freight rates as such, but there was a change made in the classification of carbon black, and this change of classification was not posted where we could see it, on the lines of the Little Kanawha Railroad Company. The Little Kanawha Railroad Company itself did not know of it until some time after the event, and it is not surprising that we should not.

Now, the question is, can we be held for a change in classification made by the Trunk Lines Classification Committee—which was never posted on the railroad by which we ship—until we receive notice of it?

The circumstances are that we shipped a car of freight and paid the freight on it at the old rate; some six months afterward or more we received a claim for additional compensation, which we have not paid because we had no previous notice of the change, and when we ship goods believing that the rate is at a certain price, and the person who accepts the goods believes it is at a certain price, I do not see how some third party can come in and make us pay an additional price without previous notice.

What is your view? GODFREY L. CABOT.
BOSTON, Mass.

This case illustrates how unwise it is to put a query in general instead of specific language. If the facts pertaining to the particular case had been stated all necessity for inference would have been obviated.

Every railway company is bound to observe its tariff rate. The classification as published by the carrier is specified in the law to be part of the tariff. It follows, therefore, that the carrier receiving the goods is bound to render the service at the published classification and charge. Nevertheless, if the charge from the shipping point to destination was not a through rate, but a combination to and from the junction with another railroad, such other railroad would have the right to insist upon its published charge, including the classification, whether different from the classification of the first carrier or not.—[Ed.]

Right of Shipper to Route Freight.

To the Editor of Freight:

SIR—Please advise us as to our rights in the following case: We shipped a car of merchandise to be delivered to a connecting carrier at a certain point. Instead of this, the initial carrier delivered it to the same carrier at another point, so that it (the first) might get the "long haul." The difference in the charge amounts to \$39.78 on the shipment.

G. A. K.

CHICAGO, January 18, 1906.

The question involved in this matter seems to be the failure of the carrier to follow the instructions of the shipper. It has been decided several times that the shipper has an absolute right to route his freight, and that the carrier must obey the instructions given to him. Nevertheless, the railroads are now contesting this question before the Supreme Court of the United States. The writer knew of a case in which practically the same thing happened, but the mistake was due to the carelessness of an agent. The matter was compromised through friendly mediation. One's remedy is reasonably clear; if he have a right to route freight and there exists no cause for the disobedience of the order (such as floods or the severity of the elements), the initial carrier is liable for damages.—[Ed.]

Canceled the Commodity Rates.

To the Editor of Freight:

SIR—Can you have your information department give us the reason for the recent advance in rates on vehicles? Some time ago we received vehicles from Flint, Mich., at 75 cents. Now the rate is 95 cents.

LEE RICHARDSON & CO.,

Lee Richardson, Pres.

VICKSBURG, Miss., December 21, 1905.

We are unable to advise you as to the reason for the recent advance in these rates. Probably the only person able to give that information would be the traffic manager of the initial railroad.

Prior to November 18, 1905, there was a commodity rate on carriages, buggies, etc., in carloads, minimum weight 15,000 pounds, from Flint, Mich., and other points in the same group, to Vicksburg and other Mississippi Valley points, of 75 cents per 100 pounds. On that date the commodity rates on this traffic between the points mentioned were canceled. This restored the second class rate into effect, with the minimum carload weight of 8,000 pounds. The second class rate from Flint, Mich., to Vicksburg and New Orleans is 95 cents.—[Ed.]

Lost: A Uniform Bill of Lading.

To the Editor of Freight:

What has become of the uniform bill of lading arrangement about which there was so much to do a year or so ago? Is the fight blissfully slumbering, as it did in 1893, or is the joint high committee of shippers and carriers doing something?

C. A. BURGOYNE.

MERIDIAN, Miss, January 9, 1906.

We regret that we are unable to give a satisfactory

Is the Rate Demand a Battle of Localities?

It has been said that the present demand for legislation looking to the supervision and regulation by the Government of the charges of common carriers is wholly a battle of localities. This is doubtless more or less true. The manufacturers of New England are more concerned with the rates on raw commodities than they are on the finished product. The grain grower of the Middle West cares nothing about the rates upon clothes, boots and shoes and other articles of wearing apparel, but wants such a rate as will allow his products to move freely. The shipper of fruit of California is using the same arguments as his competitor in Florida, but finds it necessary to put more strength into his logic. The Southern manufacturer wants rates which will allow the development of that section not only by the movement of commodities to and from his locality, but also such rates as would induce capital to construct new roads. New England, and particularly Boston, aided by New York, is jealous of the South Atlantic ports. All of the Atlantic ports are jealous of Galveston and New Orleans. San Francisco, Tacoma and Seattle desire such relation of rates that they can each monopolize the trade of the

Pacific Coast. Colorado points wish such rates as will allow their products to move beyond the confines of the United States and its manufacturers desire such rates on the raw material from the East that it can become a large manufacturing centre. When the question becomes a question of localities smaller than sections of the country, smaller than a State, each county and county court house desires particular relation of rates. Milwaukee is jealous of Chicago, and Chicago is jealous of other grain shipping points in the State in which it is located. Wichita and Kansas City are jealous of each other and both are consistently jealous of St. Louis. St. Louis objects to the Memphis rates and the objectors can be found in every place, whether it be a metropolis or a post hamlet. Each locality is fearful of the remedy proposed by another, for it is human nature to beware of the Greeks bearing fruits. The objection to remedies starts by reason of local jealousy which grows and broadens until the candidate of the "County Chairman" makes a spread-eagle speech, denouncing railways, and winds up with an excellent peroration in which he thrusts to the heart all corporations.

reply to our correspondent's inquiry. It is said that the joint committee held a meeting at Niagara Falls, at Hot Springs, Va., and at Atlantic City. Letters of inquiry to Frank J. Firth, chairman of the Uniform Bill of Lading Committee, and John M. Glenn, secretary of the joint committee, produce no information. It is possible Mr. Firth has put the document back into the incubator, in order that it may develop into so strong a child that it will be able to withstand the stormy protests of the shipping interests, or that Mr. Glenn fails to appreciate that there is an army of shippers waiting to see what they are to draw in the "conference." Whatever the reason, we are at a loss to understand why the limelight of public knowledge should not be turned on. Star chamber proceedings belong to days before the invention of railroads. Let there be light!—[Ed.]

Capitalization of the Railways.

To the Editor of Freight:

SIR—Please advise me the total amount of the capital of the railways of this country and who owns them.
 SUBSCRIBER.

HARRISONBURG, La.

The total freight capitalization of the railways of the United States, meaning thereby the par value of the negotiable securities for the year 1904, was \$12,599,990,258, being an average capitalization of \$63.186 per mile. Of this capital, \$6,155,559,032 was stock, of which \$4,876,961,012 was common and \$1,278,598,020 was preferred; the balance consisted of \$6,444,431,226 funded debt, of which \$5,426,730,154 was mortgage bonds, with miscellaneous obligations to the extent of \$640,704,135.

To state who owns these obligations is a more difficult question. The ownership is changing more or less from day to day. It has been stated that one-sixth of all of the obligations are held by savings banks, life insurance companies and educational institutions. Mr. Davenport, of Bridgeport, Conn., stated before the Senate Committee last spring that in the six States of Maine, Connecticut, Massachusetts, New Hampshire, New Jersey and New York there was collectively owned nearly \$500,000,000 of railway securities; and to his testimony was appended a list of the bonds and stocks of railways held by savings banks and other institutions. (See Appendix to Vol. 1 of Senate Hearings on Interstate Commerce.)—[Ed.]

Transporting Coal to the Philippines.

The House Committee held a hearing concerning the cost of transporting coal to the Philippines. Particular attention was given to the effect of the recent law that such traffic shall be carried in American bottoms. It was stated by an official of the Navy Department that by reason of the law the cost of transporting coal from Atlantic ports to Manila had increased from about \$4 or \$5 to \$7.50 per ton. During the hearings there were statements which indicated the belief of witnesses that there had been a combination of American bottoms to increase the rate of freight.

Subscribers who do not receive their copies of FREIGHT promptly each month will oblige the publishers by acquainting them with that fact without delay.

STRICTLY FROM A LEGAL POINT OF VIEW.

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

U. B. L. CONDITIONS DID NOT APPLY.

Appellate Court of Indiana Decides a Case Where a Receipt, but No Bill of Lading, Was Given.

THE Appellate Court of Indiana has rendered a decision in connection with a shipment of goods where no bill of lading was issued, but where a receipt was given, the Court determining that the conditions of the uniform bill of lading did not apply, notwithstanding the fact that the receipt read, "To be shipped as per directions below, subject to the conditions and exceptions of the company's bill of lading." The plaintiff sued for the value of household goods shipped from New Castle, Ind., to Rockford, N. C., the goods having either been lost or destroyed in transit. At the time of the shipment the carrier had a regular bill of lading, but issued only a receipt for the goods.

Stating the law applicable to the case, the Court said:

We cannot agree with counsel that this so-called "bill of lading" became a part of the written receipt or contract through the reference thereto in the receipt or contract. A bill of lading is defined to be "a written acknowledgment by the common carrier of the receipt of certain goods, and an agreement, for a consideration, to transport and to deliver the same at a specified place to a person therein named, or his order." (4 Elliott on Railroads, sec. 1415; Union R. Co. v. Yeager, 34 Ind. 1.) According to this definition, one of the essentials of a bill of lading is an agreement between the carrier and shipper. No bill of lading other than that above set out was issued. No other agreement was made. Reference is not made in the written instrument to some other contract or agreement executed by the carrier and shipper. It will readily be seen that the reasoning through which a contract may be gathered from writings consisting of a protracted correspondence between the parties has here no application. (Wills v. Ross, 77 Ind. 1, 40 Am. Rep. 279.) There was no other bill of lading to which reference could be made in the writing that was executed, and, as the carrier did not issue to the shipper any such bill of lading, it must be held to have abandoned that provision in the written instrument that was executed.

The writing that was executed, and which is above set out, when construed as a whole, is, in effect, a receipt for certain goods for the purpose of shipping them to a point named in the memorandum following the shipper's signature. There is no contract contained in this writing to ship the goods to the place designated or to any other place. The company, as a common carrier, was bound to receive the goods for shipment, so that a contract to ship the goods to a certain point, and there deliver them to the consignee, cannot be implied from the fact that it did receive them for shipment. It cannot be construed to be a bill of lading, and manifestly was not issued as a bill of lading, as reference is made in this writing to the "company's bill of lading." The receipt is evidence of the fact that certain goods had been delivered to the carrier, to be shipped to a place designated, and that the carrier's agent had been paid \$6.38. The writing itself furnished no evidence that the amount paid was the rate through to the place of destination, and the implication does not necessarily arise that it was the through rate. It is true, having received the goods for shipment, the implied obliga-

tion of appellant as a common carrier, arising from its relation to the public, rested upon it to ship the goods. But this implied obligation is limited by the termini of its own route, for the reason that a common carrier is not required to deliver goods at a point beyond its lines.

Appellant's legal duty as a common carrier is only commensurate with its franchise; that is, it is confined to its own line. For this reason it might make a valid special contract that it should not be liable for any loss which did not happen on its own line.

* * * * *

As the written instrument above set out was not a contract of shipment, the question is whether the evidence shows an oral contract on appellant's part to deliver the goods at the point of destination. A witness testified that, acting for appellee, he delivered the goods to appellant's agent at New Castle; that he asked the agent what the cost would be to ship the goods to Rockford, N. C., and was told it would take \$6.38, which amount he paid, took the receipt and put the goods in a car. Another witness, who helped take the goods to the station, detailed substantially the same conversation, with the addition that the agent asked something about the weight of the goods. It is not disputed that appellant carried the goods to the end of its line, and delivered them to a common carrier. It is not claimed that any of the goods were lost or injured while on appellant's line. As the goods were lost or injured after they left appellant's line, and while in charge of some connecting carrier, the burden was upon appellee, to establish appellant's liability for such loss or injury, to show a special contract on appellant's part to deliver the goods at the point of destination. By simply receiving the goods marked for delivery at a point beyond its line, appellant did not thereby contract to transport and deliver them at the place of destination. (Crawford v. Southern Ry. Co., 51 Miss. 222, 24 Am. Rep. 626.) But we think the evidence is sufficient to authorize the jury to conclude that the agent of appellant undertook to ship the goods to their destination. It was a question of fact for the jury. (Chicago, &c., Co. v. Woodward (Ind. Sup.) 73 N. E. 810.) The agent was told to what point the goods were to be shipped, and was asked the rate to that point, and collected the entire charge. He gave the shipper a writing, which in no way indicated to the shipper that his company was not undertaking to ship the goods to their destination. The fact that the agent, if we assume that he had authority to act, gave the through rate and collected the entire charge, were circumstances strongly tending to show a contract for through transportation by his company, or such a "connection in business" as to make his company liable over the entire route. We think there was competent evidence before the jury that appellant's agent contracted to carry the goods to their destination.

* * * * *

The question remains whether the agent had authority to bind his company by such a contract. The contract was made with appellant's local station agent at New Castle. No attempt was made to show what authority the agent had as to making contracts for the carriage of goods. It is true that whether the agent had authority to make such a contract was a question of fact for the jury, and we could not disturb this finding of the jury, if made upon evidence legally sufficient to justify it. (Ogdensburg, &c., R. Co. v. Pratt, 22 Wall, 123, 22 L. Ed. 827, and notes.) But the substance of the evidence from which the conclusion of authority was drawn is that the local station agent, in answer to a question, named the through rate, collected it, and gave a receipt for goods marked

through to destination. It does not appear that there had ever been any previous dealings between appellee or his agent and the company from which such authority might reasonably have been inferred, nor is there any evidence that the company held itself out as a common carrier to a point beyond its own line. The agent might bind the company within the limits of his apparent authority, but as appellant, as a common carrier, was not bound by law to carry and deliver goods beyond its own line, we cannot presume that the agent had authority to bind the company by contract for carriage beyond its own line. His authority to receive goods for carriage does not imply authority to contract for extra terminal liability. Strictly speaking, the business of appellant as a carrier is confined to its own line, and the general scope of the authority of a subordinate agent must be limited to the company's business. No express authority of the agent is shown, and there is not sufficient evidence from which such authority might be implied.

(P. C. C. & S. T. L. Ry. v. Bryant, 75 N. E. 829.)

IMPORTANT DECISIONS IN BRIEF

A railroad company, having previously made arrangements with a transport company to furnish all vehicles necessary for the accommodation of its passengers at the regular station, may legally exclude from the station and adjacent ground owned by the carrier, hackmen seeking entrance for the purpose of soliciting patronage. The remedy at law being inadequate, as the injury is a continuing one, an injunction was held to be the proper remedy. (Donovan v. Pa. Co. 26, Sup. Ct. Rep. 91.)

The assignment of a bill of lading is the symbolical delivery of the property represented by that document. If one discounts bills of lading and then overdraws his account, a bank is entitled to charge the account with the amount of the draft if it be not paid. One who draws a draft with bills of lading as collateral and discounts the same, guarantees that the draft will be honored, or if dishonored, he is under duty to pay the amount which has been advanced; a lien of the bank on the property covered by the bill of lading continues until the bank is reimbursed. (Kentucky Refining Co. v. Bank of Morriston 89, S. W. Rep. 492.)

A judgment of \$800 was recently awarded a plaintiff who had surrendered his pass to a conductor and received a hat check therefor. The passenger disembarked at an intervening station, and taking the next train, the conductor of the same refused to carry him unless he paid his fare; the conductor even refused to receive the fare for the plaintiff tendered him by his friend, and ejected the passenger. It was held that the conductor's refusal of the tender was not justified and the ejection wrongful. (M. K. & T. Ry. Co. v. Smith, 89 S. W. Rep. 668.)

Where one sued a railroad company for damages by reason of fire alleged to have been negligently started by the engines of the carrier, it is necessary to establish by reasonable affirmative evidence and to a reasonable certainty that the origin of the fire was due to the locomotives of the carrier. (Wicks v. T. E. R. Co., 82 Pac. Rep. 711.)

Owners of a steamship company are responsible for the personal baggage of the passenger unless the loss of the same was caused by the act of God or the public enemies. (Hart v. N. G. L. S. S. Co., 95 N. Y. Supp. 733.)

A steamship company is responsible for the loss of articles by a passenger notwithstanding the fact that he left his stateroom door open and unlocked, it being the duty of the steward in the employ of the steamship company, having entered the room, to lock the door. Affirming the case, Adams

v. N. J. S. S. Co. 151, N. Y. 163, the court reiterated the law there laid down.

"The traveler who pays for his passage and engages a room in one of the modern floating palaces that cross the sea or navigate the interior waters of the country establishes legal relations with the carrier that can not well be distinguished from those that exist between the hotel keeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is as free from all intrusion as that assigned to the guest at a hotel. The two relations, if not identical, bear such close analogy to each other that the same rule or responsibility should govern."

(Hart v. N. G. L. S. S. Co., 95 N. Y. Supp. 733.)

Where, in a contract of shipment, a carrier limits its liability, there must be a consideration other than the delivery of the goods and the agreement to transport. If a contract contain a provision reading that the rate will be higher if the shipment is not made under the contract, such provision was held *prima facie* evidence of consideration for the stipulation by which the carrier limits its liability. Such clause in a contract does not show on its face that it was prohibited by the Interstate Commerce Act as not offering the shipper a choice of rates. (Chicago, I. & L. R. Co. v. Hare, 75 N. E. Rep. 867.)

Where it appeared in evidence that two connecting carriers had the same freight agent at point of origin, the same train dispatcher and the entire route between point of origin and destination under one general freight agent, the carriers were held as partners and liable as such in a suit involving delay in shipment. (I. C. R. R. v. Jones, 39 Sou. Rep. 493.)

Where one sued a carrier to recover the value of property covered by a bill of lading, it was held that the carrier might show that it never received the goods covered by the contract of shipment, even though the plaintiff be an innocent holder. (Swedish-American National Bank vs. C., B. & Q. Ry., 105 N. W. 69.)

If a railroad company negligently refuse to receive and transport freight intended for immediate sale on the market, it will be held liable for the expense for keeping the goods and for the difference in price of the commodity when it should have arrived at the market and the price when it did actually arrive. And the market reports in journals are competent evidence to show the state of the market. (C., B. & Q. Ry. vs. Todd, 105 N. W. 83.)

It is the duty of a carrier to provide suitable stations for the protection of its passengers. (M. K. & T. R. Co. vs. Byrd, 89 S. W. 994.)

Where a passenger ascertained that his grip had not been put upon the train on which he traveled, and telegraphed for it, addressing the company's agent at the point where he left it, and it appears that the agent gave it to a train porter, who failed to deliver it, the carrier is liable. (Haas vs. L. & A. R. Co., 89 S. W. 1001.)

Where a carrier has been ordered to place goods on a team track for unloading (it being the custom of such carrier to place goods thereon for the convenience of customers), and in a specific instance it did not do so until some days thereafter, the carrier was held for the unreasonable delay in placing the goods. And the fact that the goods had been sold by the original consignee does not relieve the carrier from this duty. (Russell Grain Co. vs. Wabash R. Co., 89 S. W. 908.)

Where a contract of shipment binds a carrier to transport goods to a particular destination, but the initial carrier con-

veys the goods beyond destination, it is liable for unjust discrimination under the Texas statute. (S. A. & A. P. R. Co. vs. Stribling, 89 S. W. 962.)

If an authorized agent of a carrier receive cattle under a verbal agreement made by an authorized agent, the carrier is nevertheless bound by the contract. (Gulf Sea & S. F. Ry. Co. vs. Jackson et al., 89 S. W. 968.)

A statute of South Carolina gives to shippers a penalty of \$50 if a claim for loss and damage against a common carrier be not paid within the period prescribed by the statute. It has been decided, however, that a consignee cannot recover this penalty for freight which has been lost, where he accepts, after the expiration of the specified time, the amount claimed by him, the time when he accepts payment being before he commences his suit. (Best Vs. S. A. L. Ry. Co., 52 S. W. 223.)

Where one sues a carrier for a conversion of his goods and it appears that the consignee is entitled to possession, it is required that there must have been a demand for the goods and a refusal, unless there be proof of the dealing with the property by the road otherwise; at the time of making the demand it is probable that the bill of lading should be presented. (L. & N. R. Co. vs. Britton, 39 Sou. 585.)

Where a shipper has knowledge that the carrier with whom he deals has no authority from connecting carriers to send a shipment except by a certain route, he cannot recover damages to the shipment occasioned by misrouting, even though the shipper requested that they be routed via another connecting carrier. (Houston & T. C. R. Co. vs. Everett, 89 S. W. Rep. 761.)

An act of the State of Texas providing that whenever any freight has been transported over two or more railroads operating within the State, suit may be brought for damages against any one or all of the corporations handling the property, has been held not to apply to an interstate shipment where the carrier limited its liability to damages occurring upon its own road. (M., K. & T. Ry. vs. Elliott, 89 S. W. Rep. 767.)

Where the negligence of one connecting carrier concurs with that of another and damages caused to a shipment, the first mentioned cannot avoid its liability. (Gulf C. & S. F. Ry. Co. vs. Tery, 89 S. W. Rep. 792.)

NATIONAL BOARD OF TRADE MEETING

Text of the Adopted Compromise Resolution Concerning the Remedying of All Transportation Abuses.

The thirty-sixth annual meeting of the National Board of Trade was held in Washington on January 16, 17, 18. The delegates were called to order by Col. J. J. Sullivan, of Cleveland, Ohio, president of the organization. Much interest centered in the report of the Committee on Interstate Commerce Law. After considerable discussion the following resolution was unanimously submitted and adopted:

The National Board of Trade, believing that the interests of the people demand not only that the rates of transportation should be reasonable, and that there shall be no unjust discriminations or preferences, but also that there shall be effective governmental supervision of all interstate transportation agencies, express the hope that the Congress will, in its wisdom and as speedily as possible, enact such further legislation as may be necessary, with justice to all con-

cerned, to secure prompt and complete correction of any abuses in transportation methods or operation which may, upon due inquiry, be found to exist; and, to that end, that rebates and personal discriminations, in whatever form they may occur and by whatever device that may be accomplished, prohibited; the corporations and individuals who in any manner participate in them be subjected to severe penalties, and the most effective machinery practicable be provided for their detection and punishment; also, believing that the Government should, in the interests of the general public, including the purchasers of transportation as well as the carriers, possess means to prevent the naming of excessive rates in the schedules, it is recommended that, whenever a United States court of competent jurisdiction, upon complaint of the Interstate Commerce Commission (which complaint shall be given precedence), shall have determined that the existing rate is excessive, the Commission, or some other competent authority, be given the power to compel the substitution of a reasonable maximum rate, such rate to go into effect within a reasonable time and remain in force for such period, not longer than one year, as may be determined, the rate so fixed to be subject to revision in a proper Federal court upon proof that such rate is less than a reasonable compensation.

H. T. Newcomb, one of the committee, said, after the adoption of the resolution:

"It was conceded by everyone that the people of the country know a great deal more about the subject of railroad regulation than they did a year ago. The results of this greater knowledge appeared in the attitude of the local commercial organizations which are the constituent members of the National Board of Trade, and may be measured by comparing the present attitude of the board with that of a year ago. Last year the national board adopted a resolution which was in line with the Esch-Townsend bill, except in the single detail that it provided for a judicial review of the orders of the Interstate Commerce Commission before they should become effective. It was evident from the first day's session of the present meeting that the idea of making the Commission a deputy legislature, with rate fixing power, had become so unpopular that the Esch-Townsend bill, even with radical modifications, could not receive the indorsement of the board. In fact, a clear majority of the membership was strongly opposed to rate fixing legislation in any form.

"The resolution finally adopted was a concession to the only two organizations represented in the national board which were at all inclined toward extreme action."

Frank D. La Lanne, the newly elected president of the National Board of Trade, is a native of Philadelphia. He was born in 1849, and was educated in the Quaker schools of that city. He graduated from the Central High School, taking post graduate studies in France. He embarked in business on his own account upon arriving at his majority, becoming a manufacturer and commission merchant; from active business he retired in 1900 and has spent much of his time since in the study of mercantile pursuits in this country and abroad. At the present time he is director in several banks and trust companies.

Affable in manner, able and energetic, Mr. La Lanne is admirably adapted to the position to which he has been elected.

HEARINGS AND RULINGS BY STATE COMMISSIONS.

ARKANSAS.

The Railroad Commission will hold a hearing on February 14 to consider the matter of rates on milling coal and to ascertain correct distances by rail between Little Rock and Ft. Smith, for the purpose of calculating freight charges.

The following rulings, being exceptions to Western classification, have been issued:

Rate on cotton seed and its products. L. C. L. to be the same as on corn L. C. L.

Cotton seed meal and hulls may be loaded in same car with corn and other feed stuffs and if C. L. take current rates on corn.

Rates on wooden cross arms to be 300 per cent. of lumber rate.

Cider and similar commodities in glass, boxed, L. C. L. class 4; C. L. class C.

Agricultural implements to be rates Class A, minimum weight 20,000 pounds. These articles in straight and mixed carloads may be stopped once in transit on direct line at charge of \$5.

Plow points and similar articles in kegs, barrel or bundles to be plainly marked L. C. L. third class.

L. C. L. canned goods rate made to apply on considerable number of goods, in wood and glass L. C. L. If packed in glass must be packed in barrels or boxes released.

Rate on portable houses is to be three cents higher than on lumber.

Hay, straw and other articles taking corn rates may be included in same car.

The estimated weights on hay and straw, where track scales are not available, are graduated as follows: Cars 30 feet and under, 16,000 lbs.; cars from 30 to 32 feet, 18,000 lbs.; cars 32 to 34 feet, 19,000 lbs.; cars 34 to 36 feet, 20,000 lbs.; cars 36 feet to 36 feet 6 inches, 22,000 lbs.; cars 36 feet 6 inches to 40 feet, 24,000 lbs.; cars over 40 feet in length, 30,000 lbs.

Return shipments of agricultural implements, iron safes, machinery and scales for repairs are to take one-half of tariff rates on shipments of new goods, both L. C. L. and C. L.

Rates on bagging and ties, tie buckles and rivets, L. C. L. are 150 per cent. of carload rates on some commodities.

Rates on common soap and soap powder shall be same as on packing house products.

Estimated weight of standard barrel of apples 150 lbs.

The aggregate charge on a commodity of given weight shall not exceed the charge on a greater weight of the same commodity, i. e., the charge for less than 2,000 pounds shall not exceed the charge for 2,000 pounds.

Maximum rate on sugar 13c. per cwt.

Oil, coal, petroleum, in wood or iron barrels, L. C. L. fourth class rates.

Rate for haul C. L. of three miles or less, but not subject to the shipping tariff, one cent per cwt., minimum \$5 per car.

Rate on machine made building material, C. L. minimum, 30,000 lbs., is 500 per cent. greater than rate on common bricks.

Shipper and carrier may agree that cotton may pass first compress for compression.

Subject to the laws of the State regarding furnishing of cars for live stock, the Commission has amended its rules for supply cars to read as follows: "When a shipper makes written application to a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight, and its final destination, the railroad company shall furnish same within five days from 7 o'clock A. M. the day following such application. Provided, that when a shipper orders a car or cars and does not use the same he shall pay demurrage for such time as he holds the car or cars, at the rate of \$1 per car per day, dating from first 7 A. M. after car or cars are placed.

"Or, when the shipper makes such application and specifies a future day on which he desires to make a shipment, giving not less than five days' notice thereof, computing from 7 o'clock A. M. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application."

Local freight trains shall carry baggage under the same rules as provided for passenger trains.

Maximum rates for first class passengers are as follows: On line of road 15 miles or less, 8 cents per mile; lines 15 to 75 miles, 5 cents; lines over 75 miles, 3 cents per mile.

LOUISIANA.

Upon a re-hearing upon the rates on cotton seed and cotton seed products, the

Commission has determined not to change its order issued December 13, the rates therein named becoming effective February 1.

By order the Commission has provided for the erection of "umbrella sheds" at the Union Depot, Shreveport, and for the construction of depots at Singer, La.

Inasmuch as the Western Union Telegraph Company has a cable across the Mississippi River, that company is ordered to establish a centrally located office at Algiers; as the Postal Telegraph Company has no cable across the river and as the Western Union will be able to render good telegraph service at Algiers, the complaint against the former company is dismissed.

It appearing that the telegraph company at Gretna is employing a messenger to deliver messages free of cost at that point, the petition for additional service is denied.

In the complaint of Richaud, alleging that a telephone company charged him for more than three minutes' conversation, when in fact, the time used was less than that, the facts showing that the record of the company was correct, the complaint is dismissed.

The complaint of the citizens of McManus against the Jackson Railroad Company and the Yazoo & Mississippi Valley Railway Company has been disposed of by the Commission ordering that the first named carrier cease and desist from making any charge whatever on cars loaded at McManus and that the last named carrier shall repair and bring to standard grade the crossing of its right of way at McManus.

The report of accidents to passengers and employees in Louisiana for the past year shows a marked improvement. But two passengers were killed, while in the previous year there were fifty-seven. The number of passengers carried during the year 1905 was 5,388,050.

INDIANA.

The Commission has begun proceedings in the Superior Court to compel by injunction obedience to its order regarding excess baggage. The matter is of great importance to traveling men, and

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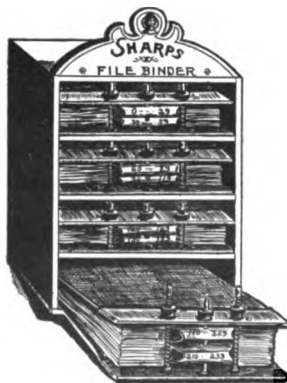
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it is said that the proceeding is, among other things, for the purpose of testing the powers of the Commission.

GEORGIA.

The Commission is considering the reduction of Classes A and B to Class A, standard tariff. The matter involves quite a change, being a reduction in rates on these classes from 10 per cent. to 25 per cent.

The Commission has refused to grant the petition of H. L. Barfield, of Macon and the Atlanta Freight Bureau, for a reduced rate on special iron from Savannah and Brunswick to Atlanta.

It having been alleged that the Syl-
vania, Louisville & Wadley, the Still-
more Air Line and other branch lines
belong to the Central of Georgia, the
Commission will hold an investigation to
determine the matter.

It was reported that the Commission
would soon order a horizontal reduction
of all rates 10 per cent. This report has
been officially denied by one of the
Commission, who says that the Commis-
sion will continue its policy of making
revisions and reductions whenever it is
shown that they are just, but that no
horizontal reductions of rates are in con-
templation.

The merchants of Savannah approve
the move to change Classes A and B/
to Class A, standard tariff, for the rea-
son that it will mean much lower rates
to that city. The Commission has
placed the Southern, Central of Georgia
and Atlantic in such classification that
rates will be reduced locally about 10
per cent.

The stove rate decision is still one
of the matters of comment. The latest
phase of the situation is that the Su-
preme Court has held that it has no
jurisdiction to enjoin the enforcement of
rates prescribed by the Commission.

The Commission has issued an order
to the Georgia Southern & Florida and
Atlantic & Birmingham railroads to
show cause why their classification
should not be changed, so as to make
reductions in their local charges sim-
ilar to the changes prescribed for the
Southern, the Central of Georgia and
Atlantic Coast Line.

MISSISSIPPI.

The Commission has been asked by
the Pascagoula Street Railway Company
to approve a new tariff of rates, by
which on all classes the rates are per-
pendicularly advanced 4 cents on all
classes; on lumber to Ohio River points
2 cents. As a setoff to these advances
the carrier proposes to reduce rates on
logs from \$7.20 per car of 24,000 pounds
to \$5; on lumber between points on the
carrier's line to Scranton, Miss., from
\$9 per car to \$8, and rates to other points
on carrier's line from \$9 per car to \$6.

TEXAS.

If the Commission puts into effect
rates on lumber in accordance with the
recent investigation, it is said that the
carriers will force the matter to issue
by appealing to the courts.

The fourteenth annual report of the
Texas Commission has been issued. It
embraces many new features, rates and
rulings on express matter being included.
From the report it appears that the
largest tonnage is furnished by lumber
(5,750,103 tons); coal, coke and lignite
rank next (4,197,922 tons); merchandise,
grain, cotton, live stock and petroleum
follow down the list in quantity of ton-
nage.

PERSONAL MENTION.

BROWN.—H. C. Brown, of Battle
Creek, Mich., succeeded Hiram D.
Swayze of the Michigan Central, at Kal-
amazoo, Mich.

CLARKE.—C. W. Clarke has been ap-
pointed general freight agent of the Erie
west of Buffalo, N. Y.

COLLINS.—R. L. Collins has been made
manager of the Texas Car Service Asso-
ciation, vice Major Charles B. Peck, de-
ceased.

DOWLE.—W. E. Dowle has been pro-
moted to assistant general freight agent
of the Lackawanna at Buffalo.

ELIZARDI.—J. W. Elizardi has accept-
ed a position as railroad traffic expert
with the Southern Cypress Manufac-
turers' Association, at New Orleans, La.

GOWER.—Harry Gower succeeds J. F.
Holden as freight traffic manager of the
Rock Island at Buffalo, N. Y.

HOWE.—Carl Howe, division freight
agent of the Michigan Central Railroad,
has been chosen president of the Trans-
portation Club of Buffalo.

HENDRICKS.—John T. Hendricks has
been appointed freight traffic manager of
the Western Maryland at Baltimore,
Md.

JONES.—H. S. Jones has been made
general freight agent of the Great
Northern at Seattle, Wash.

LEVIS.—Walter P. Levis, of New
York, has been elected manager of the
Montgomery, Ala., Freight Bureau. Mr.
Levis has for some time been traffic man-
ager of the Metropolitan Steamship
Company.

MEANEY.—P. E. Meaney has been
made traveling freight agent of the
Great Northern at Buffalo, N. Y.

PAUL.—J. B. Paul has been promoted
to general superintendent of the Gould
line at New Orleans, La.

RILEY.—T. E. Riley becomes traveling
freight agent of the cotton belt at Dal-
las, Tex.

REED.—J. C. Reed has been made
freight agent at Austin, Tex., of the K.
M. & T.

WATKINS.—Harry E. Watkins has
been promoted to the position of general
Western Canada agent of the Great
Northern at Toronto, Canada.

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TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA.

Emmet O'Neal, of Florence, is a candidate for the Democratic nomination for Governor of Alabama with Henry B. Gray, of Birmingham, and D. J. Meadors, of Meringo, as well as B. B. Comer. The Federal rate question appears to be the leading issue.

In Alabama last year 758,000 cars were handled as against 708,000 moved in 1904, a gain of 7 per cent.

The Southeastern Mississippi Valley Tariff Association has readjusted the rates from Ohio and Mississippi River crossings to Selma and Montgomery, the change going into effect February 1. The readjustment was made in deference to the business men of Montgomery and Selma.

ARKANSAS.

The State Board of Railway Assessments has fixed the assessments on eight of the private car companies operating in Arkansas. It was decided to assess all the cars upon the basis of \$500 a car and the board fixed the number of cars operated by each company in the State as follows: Armour Car Lines, 48; American Refrigerator Transit Co., 65; Swift Car Co., 45; Continental Fruit Express, 14; Union Refrigerator Transit Co., 31; Street's Western Stable Car Co., 20; St. Louis Refrigerator Car Co., 45; American Cotton Oil Co., 5. The tax will produce about \$2,720 for the State.

James H. Fry, of Atkins, has announced himself as candidate for Railroad Commissioner.

CALIFORNIA.

The Santa Fé has given orders to begin the improvements at San Francisco designed to make the China Basin property one of the finest terminals in America. Not less than \$300,000 will be spent.

Los Angeles liquor interests are exercised over efforts by Eastern distillers to force the railroads to carry whisky from the Missouri River to the Coast at the same rate as is paid on spirits and alcohol, and also over the agitation for treaties of reciprocity with wine producing countries. They say that California ships East about 15,000,000 gallons of wine annually. If French, German and Spanish wines are to be favored in reciprocity treaties or by a lowering of import duties, the effect upon Southern California wine producers will be almost ruinous.

COLORADO.

T. B. Aldridge, Secretary of the Retail Grocers' Association of Denver, states that he had the support of his as-

sociation when he and the other Colorado delegates to the Interstate Commerce Law Convention last fall refused to ratify the attitude of the convention, which declared for national control of railroad rates. "We were sent there," said Mr. Aldridge, "to represent the idea that freight rates should be regulated by State Commissions, and we could not go into a convention that declared for national control."

CONNECTICUT.

Hartford rubber tire manufacturers are much gratified at the results of the complaints made to the Eastern Rate Classification Committee regarding discrimination in the matter of freight rates East of the Mississippi River. Beginning February 1, rubber tires will be carried by railroads east of the Mississippi River at third class rates and at a lower rate by the carload, thus saving \$35,000 annually to the manufacturers.

GEORGIA.

The freight agent of the Georgia Northern Railroad at Doerun failed to calculate freight charges on the basis of the new tariff which went into effect October 9, 1905, and continued to collect the same charges which were in effect prior to that date and prior to the extension of the Georgia Northern into Albany. A. C. Howard, of Doerun, took the matter up with Commissioner Joseph M. Brown and it has been satisfactorily adjusted.

Judge W. F. Eve, of Augusta, has been informed by the Commission that whenever any special road improvement is contemplated in the State, the Commission will be glad to take up the question of rates and, if possible, get reductions for such special cases.

ILLINOIS.

The Big Four's new line between Cairo and Chicago was opened January 22. The important feature of the line is its connection with the Mobile & Ohio at Cairo.

Expert railroad accountants are now engaged in the compilation of statistics and comparison of rates and classifications in Illinois and neighboring States. The accountants are comparing the 20 per cent. reduced rates in Illinois with the rates on the same articles in Iowa and Indiana. The tables are given in parallel columns and show the reduced rates in Illinois on each commodity and the rates now in force in Iowa and Indiana.

INDIANA.

The Indianapolis Board of Trade refused to indorse the rate making policy of President Roosevelt by a vote of 9 to 8.

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The annual meeting of the Indiana Grain Dealers was held at Indianapolis January 17. Among the speakers were H. E. Kinney, of the Indianapolis Board of Trade, whose address appears on another page of FREIGHT; S. O. Pickens, of counsel for the Pennsylvania, and Union B. Hunt, chairman of the State Railroad Commission.

A site for the passenger and freight terminals of John R. Walsh's Southern Indiana Railroad had been selected in West Indianapolis before Mr. Walsh became financially involved. Exactly what will be done now is a matter of conjecture.

KENTUCKY.

The State Railroad Commission has fixed a flat rate of 83 cents a ton for the haul of fire clay from Carter County to Lewisville, 160 miles, over the lines of the Chesapeake & Ohio.

KANSAS.

The St. Louis & San Francisco R. R. Company has asked the State Board of Railroad Commissioners for permission to reduce the rates on domestic cement from Fort Scott to Wichita from 12 cents to 11 cents, to correspond with the rate now in effect between Iola and Wichita. Other railroads will make similar reductions.

LOUISIANA.

Exports from New Orleans for the month of December, 1905, exceed all preceding years with the exception of December, 1903.

The report for December, in part, follows:

1905—Cotton, 250,657 bales; value, \$15,496,305. Although there were less bales, the increase over December, 1904, is \$2,118,478.

Wheat, 162,800 bushels; value, \$122,460; increase of 159,754 bushels and \$118,921 over December, 1904.

Flour, 144,083 barrels; \$699,465; increase of 119,156 barrels and \$570,016 over December, 1904.

Corn, 3,307,659 bushels. \$1,686,811; increase of 1,103,598 bushels and \$586,524 over December, 1904.

Leaf tobacco, 264,751 pounds; \$27,206; increase of 142,587 and \$13,192 over December, 1904.

Total exports to foreign countries\$21,994,691
Total exports to Porto Rico.. 327,615

Grand total\$22,322,306
Compared with other years:
December, 1905\$21,994,691
December, 1904 17,807,921
December, 1903 23,006,718
December, 1902 20,190,032
December, 1901 16,131,845
December, 1900 19,100,260

December, 1899\$10,328,349
December, 1898 10,623,271
December, 1897 16,034,889
December, 1896 12,653,657

The New Orleans Lumber Exporters' Association has been formed with the object of mutual protection, particularly in the handling of freight and in terminal methods, including ocean tonnage. Among the organizers were the following local exporters: Hans Forchheimer, Ludwig Hayman, Walter Gartner, Oscar Gartner, Charles S. Elms, C. H. Rice, W. A. Powell, J. H. Hinton, R. T. Adam, H. Eggert, N. W. Murphy and S. J. Sutherland.

The New Orleans Freight Agents' Association has issued a circular to patrons in which it is stated that many of the tracers requested are useless and asking patrons to wait a reasonable time before asking for them.

Regular sailings will be established between New Orleans, New York, San Francisco and Honolulu and the terminals of the Tehuantepec Railroad by the Hawaiian Steamship Company by July 1.

Commissioner John A. Smith, of the New Orleans Board of Trade, reports substantial progress in the construction of the public road in that city. He says: "The public belt will: First, reduce the transfer charges, many of which are excessive. Second, it will afford prompt service. Third, it will offer to all the railroads and to the public ready access to the extensive publicly owned river front, wharves and docks for both export and river traffic. Fourth, it will provide switch tracks to the large jobbing and manufacturing interests in the business district. Fifth, it will open up the district in the rear of the city and afford manufacturing enterprises opportunity to acquire locations at reasonable prices, with belt track privileges that will give connection to all the railroads. Sixth, and lastly, it will afford the several new railroads which are now building to New Orleans, access to the city's docks and river front for their export and import business, and enable them to share in the large inbound and outbound local tonnage of the city by having their cars switched promptly at a low cost to and from the jobbing houses and manufacturing enterprises which will be located on the public belt."

The United Fruit Company is considering the question of diverting a considerable part of its business in the future from New Orleans to Mobile, owing to quarantine restrictions.

President Harvie Jordan, of the Southern Cotton Association, was wildly cheered at the meeting of the association held in New Orleans. Three negro delegates from Mississippi were in the convention and received equal consideration with the whites.

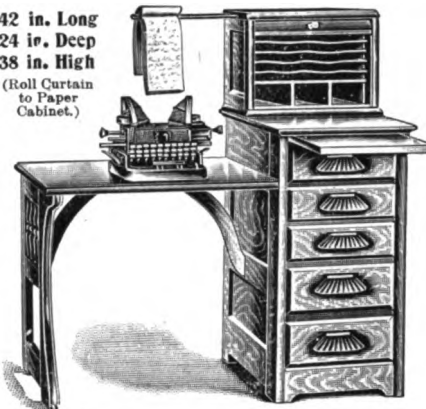
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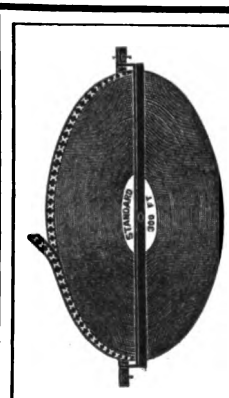
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MAINE.

According to the report of the State Railroad Commission the number of tons of freight hauled one mile was 842,025,049, against 784,385,774 in 1904, a gain in tons of freight hauled one mile of 57,639,275. The total mixed train mileage was 474,683, against 418,739 in 1904, a gain in mixed train mileage of 55,944 and making the total revenue train mileage 8,654,714, against 8,584,300 in 1904, a gain in revenue train mileage of 106,414 miles. The total non-revenue train mileage was 1,388,222 miles, against 2,102,273 in 1904, which was 714,051 miles less than in 1904. The total mileage of all trains for the year was 10,042,936, which was 607,637 miles less than for the year 1904.

The increased cost of operation of all the roads which operate wholly or partly in Maine was \$1,459,977.67, being \$54,628,365.42 in 1905 and \$53,168,387.75 in 1904. Of this increased cost in expenses the Boston & Maine Railroad Company expended \$1,347,832.48 as follows: Increase in maintenance of way and structures, \$672,675.11; increase in maintenance of equipment, \$557,340.80; increase of conducting transportation, \$141,741.47; increasing the expenditures in the three departments, \$1,371,757.38, but decreasing in general expenses \$23,924.90, leaving the increase in expenditures, \$1,347,832.48. The Maine Central Railroad Company reduced its expense of operation \$225,391.01. The increase in maintenance of way and structures was \$140,338.15; increase in conducting transportation, \$52,655.70; increase in general expenses, \$33,679.40, or \$226,673.31, but reducing its expense of maintenance of equipment \$452,014.32, reducing the expenses of operation, \$225,341.01.

The transportation expenses were reduced as a whole \$399,619.23. The general expenses were increased on all roads \$32,298.39. The average passenger fare per mile on all standard gauge roads doing business in Maine for the past year was 1.842 cents. The average freight rate per ton on all standard gauge roads doing business in Maine for the past year was .913 cents. The average freight rate per ton mile upon the seven narrow gauge roads was 4.489 cents and the average passenger rate was 3.543 cents for the year 1905.

MARYLAND.

Vice-president F. S. Landstreet, of the Western Maryland, has signified his willingness to meet representatives of the Baltimore anti-smoke league, but no date has been set for the conference. General manager W. W. Atterbury, of the Pennsylvania, promises ultimate relief through freight lines extending around the city suburbs.

MASSACHUSETTS.

George C. Houghton, secretary of the New England Shoe and Leather Association, in his annual report referred to the injurious effect of the delay in freight shipments between Boston and Pennsylvania, western New York and Ohio.

In reviewing the work of the year, the secretary said that the Southeastern Freight Association reported the establishment of new rates on boots and shoes consigned to Atlanta, Augusta, Columbus and Macon, Ga., Birmingham and Montgomery, Ala., and Chattanooga, Tenn., somewhat lower than the old rates, but requiring manufacturers to deliver goods shipside in Boston or Providence, thereby eliminating the absorption of the whole or part of the charges of getting goods from the factories to shipside, as had formerly been the case. A committee of the association took the matter up, and has succeeded in having the old rates re-established, together with the absorption of local rates from interior points, the same as formerly, except in the case of Atlanta, Ga. In that city the committee reported that the merchants had secured an injunction against the transportation companies, restraining them from annulling the commodity rate of 85 cents from Boston. The committee reported being unable to do anything further, so far as Atlanta was concerned, until the injunction has been removed.

The Enterprise Transportation Company has filed with the railroad commissioners a petition alleging discrimination by the N. Y., N. H. & H. R. R. in the matter of the refusal of the railroad company to accept and honor baggage checks issued by the petitioning company. The petitioner also asks that the fare between Fall River and Boston be reduced to 50 cents or as much below \$1.20 as the commission may deem advisable.

The Wason Car Manufacturing Co. at Brightwood will enlarge its plant and take up the building of freight cars.

The Boston & Maine has ordered 1,500 freight cars, 1,000 box cars from the Western Steel Car & Foundry Company and 500 from the Pullman Company.

MINNESOTA.

The grain growers in Minnesota and throughout the Northwest are complaining to State railroad commissions of the car shortage. It will be well along toward spring before the bulk of the grain can be transported to market.

MISSISSIPPI.

Since the veto of the merger bill allowing the Southern and Mobile and Ohio railroads to consolidate in this

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State there has been considerable speculation as to what will become of the Mobile & Ohio. Many persons believe that it will be made an integral part of the 'Frisco system and that President Yoakum will secure his desired outlet to the Gulf through Mobile by means of this line.

Lumber men still report car shortage. There is an intimation that a car foundry plant will be established at Hattiesburg.

MISSOURI.

Prominent shippers and manufacturers of St. Louis recently addressed the Municipal Bridge and Terminal Commissions on the subject of a free bridge and terminal facilities. The consensus of opinion seemed to be in favor of increasing the terminal facilities on the St. Louis side of the river.

NEBRASKA.

Governor Mickey of Nebraska believes that the decision rendered by Judge Munger leaves no doubt as to the power of the State Board to determine the taxation on railroads. He says that the next subject for the consideration of the Legislature will be "freight rates."

NEW YORK.

The general convention of the Team Owners of America will be held in New York City next June. A circular letter has been sent to each member of the association asking him concerning the conditions in his locality.

The wages of the freight handlers in the N. Y. C. freight house at Little Falls have been raised from 12 to 15 cents per hour.

At a hearing of the State Railroad Commission in Buffalo the application of the Buffalo Frontier Terminal Railroad to build a freight belt line around the city was considered. The hearing was adjourned till February 7.

The Manufacturers Club of Buffalo is making an effort to have the railroads agree to deliver package freight within the city.

NEW JERSEY.

The Erie Railroad Company is shortening the distance between Jersey City and Pittsburg twenty miles.

The State Horticultural Society intends to ask the Legislature to repeal the law prohibiting trolley companies from carrying freight.

It is announced that the Pennsylvania will soon acquire title to property in Newark upon which it will erect the terminal of the proposed high speed electric road to Manhattan.

The Pennsylvania Railroad Company plans the erection of a new freight station at Trenton, according to a statement made by the Trenton *Advertiser*.

OHIO.

Several members of the Ohio Legislature are preparing to introduce a railroad bill fashioned after the Wisconsin law.

Cincinnati grain dealers have asked the Pennsylvania Railroad Company to raise the embargo which was placed on new corn about December 1, 1905.

An old firm of grain brokers in Columbus attribute their assignment to inability to secure cars for the disposal of their grain.

OREGON.

A new schedule of rates on grain and grain products has been put into effect over the O. R. & N. from Columbia Southern points between Shaniko and Grass Valley and Portland. Wheat, oats, flour and all similar commodities will be shipped from this district into Portland at a charge of 18 cents on the 100 lbs. Previously the rate ranged from 18½ cents to 20¾ cents per 100 lbs. The new rates apply to all shipments of carload lots or over.

The O. R. & N. has also made a new classification on carload lots of oil between Portland and Spokane. It goes into effect January 29, and at a rate of 65 cents to the 100 affects the following oils: Castor, cocoanut, corn, rubber, rape seed, dead, kalon, lard, linseed, featsfoot, red, resin or "Y," and tallow, in cans boxed, in barrels, or in bulk in tank cars, loaded to capacity.

OKLAHOMA.

The revised tariff sheets of the Rock Island Railroad show an increase of from \$1.35 to \$1.40 per 100 lbs. for Oklahoma cotton to Japanese points. It is alleged that if this rate is maintained it will have the effect of causing the withdrawal of the Japan companies, who have established agents in Oklahoma, from doing business in the Territory.

PENNSYLVANIA.

The management of the Pennsylvania Railroad has sanctioned the agreement made by the Chesapeake & Ohio and Norfolk & Western and the Southern to ship freight from Norfolk and Newport News to Liverpool and London. The agreement was made in order to divert a portion of the immense quantity of freight heretofore shipped by the lines named to New York for export. Expedition of freight traffic is the reason given for the change.

Improvements planned by the engineering department of the Pennsylvania Railroad Company for completion during the present year are to cost \$12,500,000.

The Pennsylvania Railroad Company has opened the east and west bound freight yards at Morrisville, Penn. The

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yards are used for freight trains arriving from and departing for Jersey City.

It is stated that the Pennsylvania Railroad will oppose the passage of the proposed freight trolley bill before the next regular session of the Legislature.

TENNESSEE.

The Memphis division No. 175, Order of Railway Conductors, adopted resolutions opposing the placing of rate making power in the hands of any commission. Copy of the resolutions was sent to each of the Senators and members of Congress from Tennessee.

TEXAS.

Galveston exports for 1905 were valued at \$146,746,613, exceeding by over \$3,000,000 the previous banner year of 1903.

At the joint conference of the Red River Valley Navigation Bureau and the Texarkana Board of Trade at Texarkana, a committee of three was appointed to secure the co-operation of heavy shippers in organizing a freight bureau with the object of so routing freight into the State of Texas as to secure more equitable freight rates for that district.

The new tie and timber treating plant of the Santa Fé Railway at Somerville will be ready early in February. It is said to have cost \$1,250,000, and will have a capacity for handling 10,000 ties a day.

Consignments aggregating 14,000 tons of steel rails for the Harriman lines in Mexico have reached Galveston.

B. F. Yoakum, chairman of the Rock Island Board, has acquired a large interest in a tract of land lying just on the outskirts of San Antonio.

WASHINGTON.

Great Northern and Northern Pacific traffic officials announce that a tariff is to be published soon, giving a through rate on coffee from Rio Janeiro and Santos, Brazil, to Seattle, Tacoma and Portland. This is the first through rate applying to these points.

The new tariff makes it possible to ship coffee direct to Seattle from Brazilian points for 95 cents per 100 pounds in carload lots of minimum weight of 30,000 pounds. Under the present system the Coast jobbers are compelled to buy Brazilian coffee from New York houses. The rate from New York is 90 cents per 100 pounds, but in addition to this the Seattle concerns pay the tariff from Brazilian points to New York and the profit of the New York middlemen.

Under the new arrangement the coffee for Pacific Northwest points will be imported through New Orleans and delivered to the Hill roads at the Minnesota transfer.

The Great Northern and Oregon Railway and Navigation Company traffic officials expect to complete the revised joint rate schedule early in February.

The stockmen of Spokane have petitioned the State Railway Commission to take steps to secure a 10 per cent. reduction of freight rates on live stock to correspond with a similar reduction on wheat three years ago. The association also indorsed the bill pending in Congress which has for its object the extending of the twenty-eight hour shipping law to thirty-six hours.

WEST VIRGINIA.

It is stated that Wheeling merchants are not enthusiastic over the new scheme of weighing all the goods that are received for shipment for a number of reasons, the principal one being that they are compelled to spend so much time in unloading the goods, which they desire to send out.

VIRGINIA.

Superintendent Norman Bell, of the Norfolk and Portsmouth Cotton Exchange, reports the net receipts from September 1 to December 30 were 468,058 bales, against 435,399 for the same months of the preceding year, and 335,983 for the same months of 1903.

The shipments for the past months were 414,694, against 405,506 for the same months of the preceding year, and 308,117 for the same months of 1903.

Three important factors in increasing the freight tonnage to and from this port will develop into considerable activity this year in Portsmouth.

The first will be the construction of the Tidewater railway terminals on the Southern Branch on the south side of Paradise Creek. Fifty acres of land, at a cost of \$90,000, have been purchased for this purpose, and the work of dredging and filling in the marsh is now under way by the Atlantic Gulf & Pacific Dredging Company. The plans contemplate the building of three immense docks and wharves, and there will be about nine miles of switching tracks. The grading for this line between Bower's Hill and this point is now nearly completed and the laying of the rails is well under way.

The second will be the development of the property recently purchased by the Atlantic Terminal Company in the center of the harbor known as the Swimming Point flats, at a price of \$135,000.

The third will be the extension of a branch track from the lumber mills of the John L. Roper Lumber Company, at Gilmerton, to a connection with the Belt Line. This is in furtherance of the plans of the Virginia & Carolina Coast Railway, the recent purchasers of this property.

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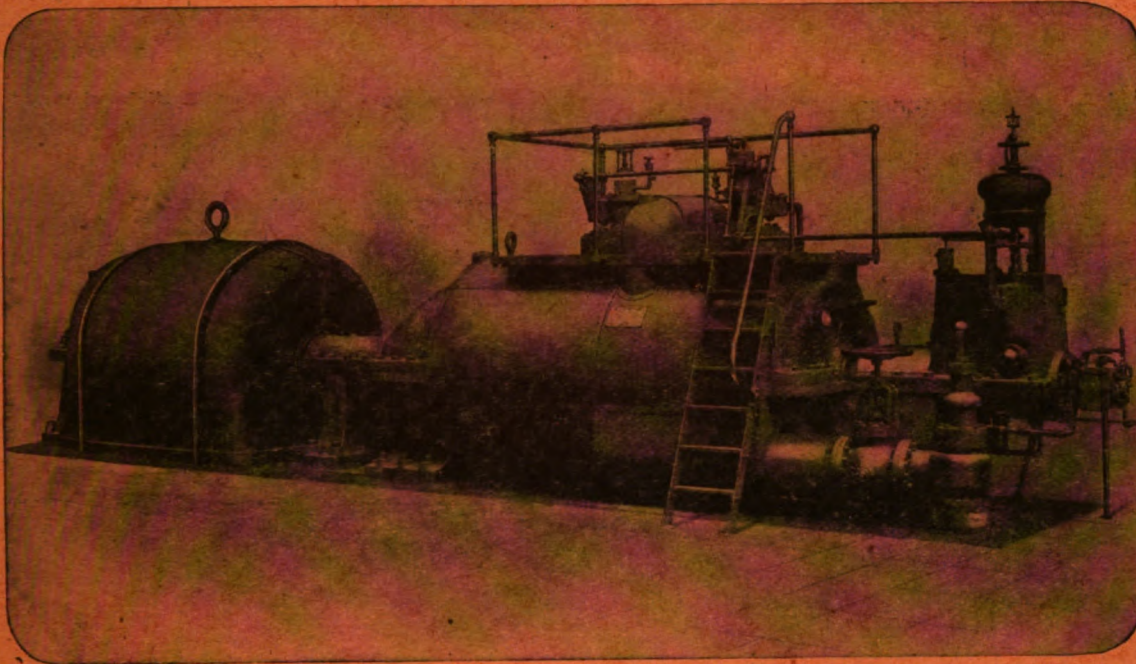
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NEW YORK, MARCH, 1906

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HOUSE DEBATE ON THE HEPBURN RATE BILL

Passed on February 8 and Sent to the Senate by a Vote of 346 to 7—Many Amendments Were Proposed, But None Was Accepted

At noon on January 30 the House of Representatives resolved itself in Committee of the Whole House on the State of the Union to consider the bill H. R. 12,987 (the Hepburn bill), embracing the regulation of railroad rates. No limit was placed on the debate.

The bill was passed on February 8 by the following vote: Yeas, 346; nays, 7; answering present, 3; not voting, 29. The seven votes in the negative were cast by: Charles E. Littlefield (Rep.), Maine, lawyer; S. W. McCall (Rep.), Massachusetts, lawyer; James B. Perkins (Rep.), New York, lawyer; George N. Southwick (Rep.), New York, journalist; Joseph C. Sibley (Rep.), Pennsylvania, manufacturer; Edward B. Vreeland (Rep.), New York, banker, and John W. Weeks (Rep.), Massachusetts, banker.

Following are excerpts from the speeches delivered upon the subject:

Mr. Townsend, of Michigan, said:

When the fathers established the Government of the United States and adopted the Constitution as its bill of rights they wisely delegated to Congress control over all commerce among the States. At that time there were but thirteen colonies from which States could be made, and they occupied the little territory east of the Alleghenies and in New England. Commerce then was limited, but the means for transportation were so crude that its movements were more difficult than those of to-day. As a legal basis of procedure in the exercise of government the common law was adopted, and that law treated common carriers as public servants and subject to governmental control, and provided that all rates and regulations charged or imposed by them should be just and reasonable.

* * *

Under such conditions the most progressive government in the world is required at this time to deal justly and fairly with the transportation problem, justly and fairly to the people and to the carriers—to the people, because the Government exists for them; to the carriers, because, being necessary for the general welfare, they are included in it and an injury to them would be an injury to the people.

* * *

What is it that the people have asked, and what is the proposed legislation? The relation of the railroads to the public is generally known. The carrier is chartered to perform certain public service. The Federal Government gives it the right to do business among the States and Territories and with foreign nations, under the express provision that it shall not discriminate in its charges and service between individuals, between products, or between places, and that all its charges and regulations shall be just and reasonable. That is now the statutory law. It has always been the common law, and no one, I apprehend, will be bold enough to assert that it is not a good law.

* * *

In response to this demand the present bill has been prepared and presented to Congress. Personally I have, since my advent into the House of Representatives, been pro-

foundly sensible of the need of railroad regulating legislation. I have advocated it when its friends here were few. I have contended for it when it was less popular than it is to-day. I am its loyal friend now when it is a popular measure in the House, where nearly every one is anxious to be recorded at least as its friend, and I trust that I have done my full duty in the efforts which have been put forth to bring to realization the desires of the people.

The bill attempts to place under the supervision of the Commission every form of interstate and foreign commerce, all instrumentalities of commerce and transportation. The measure which passed the House last session was believed to cover all the facilities of transportation, but inasmuch as some gentlemen contended that it did not, we have endeavored in the present bill to use such language as will take the matter out of the realm of doubt. To that end we have declared that cars, vehicles, and instrumentalities of shipment or carriage, irrespective of ownership or of any contract, express or implied, and all services in connection with traffic, such as elevation, ventilation, refrigeration, or icing shall be considered as being furnished by the carrier, and therefore under the supervision of the Interstate Commerce Commission. We have also stipulated that terminal, icing, and other similar charges shall be published as separate items, so that the shipper may understand just what he is paying for each particular service, and then we have said that all such charges shall be just and reasonable, that any other is unlawful.

Some of the most serious complaints have been those against these special services. Private car companies have been organized to do the people's work; the railroads have loaned their tracks to these companies, and while they have presented the charge to the shipper these private companies have really imposed them, and it is claimed that they were outside the jurisdiction of the Interstate Commerce Commission. It is not necessary for me to detail to the House or the country the gross injustice which has been done the people through these instrumentalities. We believe the bill effects a complete remedy for these evils. Hereafter any car hauled for an interstate carrier and any charge imposed upon a shipper, whether by a carrier or any direct or indirect agent of the

carrier, must be just and reasonable, and in case it is not the Commission has power to make it so.

* * *

MR. UNDERWOOD—I would like to know, the gentleman being a member of the committee, whether he can state to us he feels assured that the terms of this bill, if carried out, will control private cars?

MR. TOWNSEND—I have no doubt about that at all. I will repeat to the gentleman, I had no doubt that the last bill conveyed control of these agencies upon the Commission. The question has never been squarely before the court under the present law. I have always maintained that the power which gives the Commission control over interstate carriers gives it control over every agency of those carriers and over every car hauled by the carrier, whether owned by it or not; but this bill expressly means private cars. If the gentleman from Alabama has read the bill, he has found that the subject has been placed in this bill for the purpose of removing all doubt on the matter.

The same argument applies to elevator and terminal charges. We believe it will no longer be possible for a great manufacturing corporation to build a spur or siding up to its factory and then use it as a basis for obtaining rebates prejudicial to its competitor. The bill also aims to prevent the custom so common and so detrimental to honest competitive business followed by many large shippers, viz., of notifying the carrier that such shippers are on a certain date to have a large amount of traffic for shipment and at the same time demanding that the published rate shall be reduced on that date, so as to give them the advantage over other shippers.

This evil is known as the "midnight-rate" evil, and is one of the most effective means of violating the law against rebates known in the commercial world. We have attempted to cure this by enlarging the time in which a rate can be changed. If the bill is enacted into law, any change made in the schedule of rate hereafter must be published at least thirty days. I had hoped that it might be at least sixty days, but the majority of the committee did not agree with me on this subject, and it has been made thirty. It is thought this will give all the shippers sufficient notice of a change to prepare to meet it. We were not unmindful of the fact that circumstances might arise under which it would be desirable that a rate should be lowered in less time than thirty days, so we have provided that upon proper showing of the necessities of the case the Commission may in special cases allow a change under a shorter notice than thirty days.

* * *

The main feature of the bill, the one about which the greatest controversy has been had, and the one, I believe, which lies at the foundation of the whole matter, is that which gives the Commission power, upon complaint and after full hearing, to substitute a reasonable maximum rate in place of one found to be unjust or unreasonable. To me this is a most righteous provision. Under the law, as I have stated, no interstate carrier has any right to impose anything but a just and reasonable rate, and under that same law any other is unlawful. Heretofore the Commission has had power to declare a rate unjust and unreasonable and to order its discontinuance; but it had no power, under the decision of the Supreme Court, to substitute a just rate in its place. This has resulted in making the law absolutely nugatory, so far as positive relief to the people is concerned. For myself, I have never been able to understand the wisdom of the argument which claims that a commission might be competent to determine what is unjust and unreasonable, but incompetent to advise what is just and reasonable, for I cannot understand how any individual or any commission can know what is unjust until what is just is known. A thing is unreasonable because it is not reasonable. We say a thing is wrong because we know what is right, and the very proof and reasoning necessary to establish the unjust and the unreason-

able has of necessity first determined what is just and reasonable.

* * *

MR. SHERLEY—If the Commission has the power on complaint to change rates that are discriminatory, will the gentleman tell the House that the Commission has not power over differentials?

MR. TOWNSEND—The best authority I can obtain says that they have not. I will say to the gentleman that I was contending for the power over differentials, and the committee decided against it almost unanimously—only two or three of us in favor of it.

MR. SHERLEY—And the committee considers that that language does not give this power?

MR. TOWNSEND—It does. Now, Mr. Chairman, I desire to proceed, if I may, and answer some of the arguments, and perhaps in doing so I can answer some of the questions which naturally would arise on this subject.

This power to fix a contested rate is not a new principle, nor is the exercise of the power without precedent. For years many of the States in the Union have had commissions created by legislative authority of the States and invested with full power not only to adjust and establish rates about which complaint has been made, but in some instances to fix entire schedules for the carriers. The Interstate Commerce Commission, during the first years of its existence, assumed it had power to fix maximum rates in contested cases, and it exercised that power, and with most of its orders the carriers complied, and not until the decision of the Supreme Court in the maximum rate case did it discontinue the exercise of that power, and during all of that time the railroads were uninjured and the business of the country undisturbed. It was also claimed by the opposition that Congress had no authority to confer upon the Commission the power to declare a reasonable rate in place of one found otherwise, for the reason that it was a delegation of legislative power, and this claim has been made notwithstanding the fact that the Supreme Court of the United States has held, where the question was squarely before it, that the Legislature of a State—and therefore that the Congress of the United States—had power to appoint an administrative board and confer upon it full authority to fix rates as proposed in this bill.

The Stone case, in 116 United States, settled this question beyond a doubt. In that case it appeared that the Legislature of Mississippi had created a commission to regulate and supervise railroad rates. It was taken to the Supreme Court of the State of Mississippi, and the constitutionality of the law was brought directly in question. The carriers contended that the law was unconstitutional, for the reason that it conferred both legislative and judicial power upon the commission; that court held that such was not the case. An appeal was taken to the United States Supreme Court under the same condition, and it upheld the Supreme Court of Mississippi and said "that the function of the commission appointed to fix railroad rates was not legislative, but administrative." In the Reagan case, from Texas, the Supreme Court of the United States held the same thing. The reasoning in these decisions is this: The Legislature having passed a law declaring that all rates must be just and reasonable, it has authority to create a board to execute that law, otherwise the Legislature would be absolutely futile to regulate rates effectively in the State or among the States. This principle is recognized in the acts of municipal bodies everywhere. The Commission for the District of Columbia fixes street car fares, hack charges, gas and water rates, and nearly every city in the Union does the same thing. It should not be forgotten that the authority of the Commission is subject to review by the court as to its lawful exercise.

* * *

But this is not the only constitutional objection which has been urged against the exercise of this power. It was in-

sisted, more formerly than now, that if a commission fix upon a contested rate from any interior point to a seaport, that such action would be a violation of the so called non-preference clause of the Constitution, which provides that the ports of one State shall not be preferred to those of another. This provision of the Constitution was adopted at a time when interstate commerce, as we see it now, was unknown. The railroad had not then been born, and the fathers were imposing a restriction upon Congress against a preference as to exports and imports, but the same men who wrote that provision of the Constitution also inserted the one providing that Congress should regulate commerce among the States and with foreign nations, and few constitutional lawyers ever claimed that if, while exercising the constitutional power of regulating commerce as aforesaid, an incidental benefit or injury should come to any port, such exercise would be unconstitutional, and in all the years of our country's history, during which the National Legislature has been erecting lighthouses along our coasts and improving rivers and harbors whereon are situated cities, it has not been claimed that such acts were unconstitutional, although it was recognized that every city in front of which a lighthouse was erected, every city whose harbor was improved, was to that extent benefited, and, in a manner, preferred over other cities not receiving such advantages.

* * *

No one familiar with the circumstances believes that any harm would be done the railroads, and few honest, intelligent men advocated it. The plan was, first, to prevent private rebates—that is, granting advantages to one man which another does not enjoy; second, to prevent extortionate charges. It is simply begging the question to say that the establishment of just rates will injure the railroads. One of the most serious wrongs at present is the custom which the roads have of reducing rates to certain individuals and places below what would be a fair rate, or one that would produce a dividend, and then imposing an unjust and unreasonable charge upon other individuals and places to offset the apparent loss. The country demands that all the people shall be treated alike, and that only just and reasonable rates shall be imposed. If that is done, the carrier will not necessarily be injured or its revenues reduced; the burden will be equally distributed. Frequently the establishment of a just rate, even if it is lower than the one theretofore existing, produces more revenue. This, I believe, was clearly demonstrated in what is known as the "Michigan Central charter case." In the charter obtained by that company from the State of Michigan the road was allowed to charge 3 cents per mile for passenger traffic, but the charter provided that if at any time the State Legislature saw fit to reduce the rate and thus annul the charter it could do so, but that the company should have the right to go into court if it conceived itself to have been injured, and establish by a jury just what loss it had sustained and the State was to reimburse it for the same.

* * *

There is still another phase of this question which should not be overlooked. Originally railroad securities were not eagerly sought as investments; today such investments are most attractive, and the disposition of promoters and managers has been to increase the capital out of proportion to the real assets of the companies, and now, when gentlemen are asking that dividends shall be maintained, they do not simply mean dividends on bona fide capital, but upon inflated capital, and I submit it is a proper question for Congress or its duly authorized Commission, when determining the question of just and reasonable rates, to inquire into the capitalization of these carriers. I know it is claimed that these stocks have been issued in many instances and placed in innocent hands, and that if anything were done—and I do not consider that it will be—to injure the value of these stocks, such bona fide holders would suffer. I simply answer this argument by say-

ing that we legislate for the whole people. It is our duty to so regulate interstate and foreign commerce as to deal justly with all of our people, and if it should be demonstrated that some few holders of fictitious capital should fail to get an exorbitant return on their holdings, the law should in justice be enacted, for we have no business to "rob Peter to pay Paul." It has further been argued that there is no proof that rates are too high, and gentlemen take pleasure in comparing the American railroad rate with that of Germany and other European countries.

* * *

My contention is that the rate in the United States should be the lowest in the world. Our traffic is the greatest, our hauls the longest, our facilities the best. But I am convinced that if we were to compare the American rate with the European rate under similar circumstances and conditions, eliminating all elements which are not common, we would find no cause for pride in the result. Then think of the fairness of the proposition to compare our rates with those of Russia. A great per cent. of its mileage is through a desert where traffic is scarcely known and business necessarily unprofitable. But, gentlemen, we are dealing with the question as presented in the American Republic, and the people have demanded that Congress shall exercise its constitutional power to regulate interstate carriers in accordance with the law, and we shall have difficulty in explaining to our constituents, who are awake to this situation, if we fail to do our full duty in the premises.

* * *

MR. LITTLEFIELD—Do I understand the gentleman's position to be, as a matter of law, that the Supreme Court could interfere by injunction to restrain the carrying into effect of an order of the Commission whenever they were of the opinion that the rate was unreasonably low, or is it based upon the confiscatory proposition?

MR. TOWNSEND—My judgment until I had read the Nebraska case was that it would simply be on the confiscatory proposition. I think the syllabus will give us all we want on that point.

MR. LITTLEFIELD—I am reading from the opinion, which, of course, is a little more authoritative than the syllabus.

"In view of the adjudications, these principles must be regarded as settled."

Third—

After reciting two that do not concern this discussion—

"While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and therefore without due process of law, cannot be so conclusively determined by the Legislature of the State or by regulations adopted under its authority that the matter may not become the subject of judicial inquiry."

(Mr. Townsend continued:)

For myself, I am satisfied that the proposed legislation will not harm honest carriers engaged in lawful business; all others will be and should be in imminent danger. I readily admit that there is an honest difference of opinion as to the policy of the measure. Some believe that the carriers will solve the problem if left alone, but it seems to me that such have not taken sufficient time to read and understand the history of railroading during the last few years. Gradually, but surely, rates have been raised, and during a period when there was no possible excuse for such a course except the desire to satisfy greed. Business has increased, and the net results of operation have shown that expenses have not increased in proportion to the enlargement of traffic. Railroad consolidation has been so complete that a few men, about six, control the great bulk of the railroads, and more and more the people are

being placed at the mercy of these great corporations. Complaints have come up to Congress from all over the country against the growing and insolent power of great consolidations of capital, and it is not sufficient to say, as some have said, that the complainants are demagogues and agitators, for already members have discovered among the number their most patriotic and intelligent constituents.

* * *

Temporizing will bring nothing but disaster. Already we hear the rumbling of discontent, and socialism smiles in satisfaction with every delay. Regulation of a public servant is not a departure from the principles of popular government; but disregard of a righteous law and indifference to legal restrictions imposed to protect the people's rights are more than socialism—they are anarchy—and were I a railroad agent instead of a people's Representative I would hail the proposed legislation as a salvation to my master from the fate which an indignant people is sure to visit upon the corporations who, believing that they are above and beyond the law, seek to become a law unto themselves.

Let the bill pass, and let the railroads heed its provisions, and instead of retarding its execution, aid in its operation, and then, instead of being the objects of suspicion and hatred, they will be recognized as the instruments of progress and prosperity. Rate legislation will enter into history, and its entry will not be marked by any business disturbance, but rather it will indicate the beginning of an era of better feeling between the railroads and the people—an era of equal rights and opportunities under a just and impartial law.

Mr. Adamson, of Georgia, said:

We could not afford to hazard the advantages secured by failing to agree to a unanimous report. True, some of us desired additional provisions, but objecting to nothing in the bill we would not have been justified in filing a minority report and resisting the passage of the bill because of the omission of some other things, no matter how good, which may be made the subject of other and separate bills. We understand that a few people on both sides of the House, rehashing the same matter thrashed over by us in the committee, still object to the unanimity existing in our committee. It has been intimated in the Republican press that some Republican members chide their brethren on our committee for bringing in a bill which the Democrats could indorse, claiming that being in the majority they ought to have carried through and labeled with a partisan stamp such action as might be had. On the other hand, it may be true that some Democratic members would have preferred to make a fight for particular provisions, but we would have them understand that we made the same fight, and when they clearly perceived that we had to abandon the fight for them or lose many others equally valuable they will surely understand and concur in our action.

* * *

The words "fairly remunerative" we yielded to, because it did not change the sense a particle. I do not believe that in any country where the laborer is worthy of his hire, where it is acknowledged that railroads are desired by everybody and in every community, and where the right to earn a fair return is acknowledged by everybody, that a commission in considering what is reasonable and just would fail to consider whether it was fairly remunerative upon actual, honest, unwatered investment.

Mr. Hinshaw, of Nebraska, said:

This bill is voluminous and complete, and is an honest effort to reach and correct the various abuses and discriminations which exist in railroad traffic. It provides:

1. That all charges for transportation of passengers or property shall be just and reasonable, and all unjust and unreasonable charges are prohibited under strong penalties.

2. Every common carrier shall print and keep open to public inspection schedules, plainly printed and posted, showing rates,

fares and charges; all classifications of freights; all terminal charges, and charges for icing refrigerator cars.

3. No change in rates shall be made except after thirty days' notice, plainly stating the changes proposed and the time when they shall go into effect. This provision seeks to avoid the so-called "midnight tariffs."

4. It shall be unlawful to charge or collect a greater or a less compensation for any service than is named in the schedules so printed and posted.

5. Every carrier must file with the Interstate Commerce Commission copies of its schedules, and notify the Commission of any proposed changes at once, and all joint tariffs between connecting lines shall likewise be filed. These schedules may be made public by the Commission. A carrier refusing to file the schedules may be compelled by mandamus and punished for contempt and enjoined from transporting property at all until compliance.

6 (and most important and far-reaching of all). The Commission must, when shown that a rate or charge, regulation or practice is unjust and unreasonable, or unjustly discriminatory, preferential, or prejudicial, prescribe a just, reasonable and fairly remunerative maximum rate, and make an order that the carrier shall cease to publish or collect any rate in excess of the maximum so prescribed. Such order shall go into effect in thirty days after notice to the carrier, and remain in force until set aside by a court of competent jurisdiction.

7. If the owner of the freight renders any service or furnishes any instrumentality used in transportation, the charge therefor shall be just and reasonable, and the Commission may, on a hearing had, fix and enforce for such service a reasonable rate. This provision controls the charges for terminal facilities, icing of cars, and private cars furnished by the shipper.

8. Any carrier or its officer neglecting or refusing to obey an order made by the Commission shall forfeit for each day's refusal \$5,000, and this bill provides appropriate and effective procedure for its collection, and also to compel the carrier by injunction or mandatory process to obey.

9. Annual reports from all interstate carriers are required, showing in detail:

(1) The amount of capital stock issued, the amounts paid therefor, and the manner of payments for the same;

(2) The dividends paid, the surplus fund, if any, and the number of stockholders;

(3) The funded and floating debts, and the interest paid thereon;

(4) The cost and value of the carrier's property, franchises, and equipments;

(5) The number of employees and the salaries paid each class;

(6) The accidents to passengers, employees, and other persons, and the causes thereof;

(7) The amounts expended for improvements each year, how expended, and the character of such improvements;

(8) The earnings of and receipts from each branch of business and from all sources;

(9) The operating and other expenses;

(10) The balance of profit and loss; and

(11) A complete exhibit of the financial operations of the carrier each year, including an annual balance sheet.

Such reports shall also contain such information in relation to rates or regulations, concerning fares or freights, or agreements, arrangements, or contracts, affecting the same as the Commission may require; and the Commission may require a uniform system of accounts and prescribe the manner in which such accounts shall be kept.

The bill also provides severe penalties for failure to make such reports and for false swearing and false entries, and the Commission shall at all times have access to all records of

every kind belonging to the carrier and may employ special agents to examine them.

10. The Interstate Commerce Commission is increased in number from five to seven members, not more than four to be taken from any one political party, thus insuring speedy disposition of complaint and prompt remedy of wrongs.

A condition that has confronted our country has been the midnight tariff. I have in my possession a letter from a shipper in my district in which he sets forth that the real trouble with the small shipper in this land is the discrimination that results from the secret giving of information of a coming change in or a lowering of a rate, by which a favored shipper in some locality—and there always is some favored shipper there—has knowledge for days and perhaps weeks beforehand that the rate will be lowered at a certain date. He goes to work and gets the freight of that community—the grain or whatever it may be that is to be shipped—into his hands, knowing that the rate will be decreased. He can overbid his competitor, who knows nothing of the coming change.

Mr. Campbell, of Kansas, said:

I doubt, sir, the legal right of a common carrier, under its charter, to permit the use of a private facility in the transportation of any commodity in this country.

The shipper who uses his own cars, or cars that are controlled by him, has an unlawful and unfair advantage over his less fortunate competitor, who uses the cars or facilities provided by the carrier. The use of private cars by large shippers has enabled them to crowd out their smaller competitors. The right of fair competition, the necessity to prevent the creation and maintenance of monopoly, make it necessary that common carriers shall offer no advantages, either by facilities or by rates, to one shipper over another.

A due regard for the public welfare demands the maintenance in the United States of the law of competition unmodified, unobstructed and inviolate. The irresistible result and the logical effect of conceding to large shippers the right to use their own facilities is the creation of monopoly, which is always dangerous to the public welfare. The rights of the public to a competitive market in which to sell and in which to buy are of first and last importance, and these rights are not secure where one producer has an advantage over another on the way to market.

Is there a doubt about this? Does the use of private facilities by shippers give such shippers advantage over competitors in reaching the markets of the country? Does their use result in the creation of monopoly? The mere mention of two industries shows that the use of private facilities, or private cars on common carriers, has resulted in the creation of monopolies which control the business today in which these concerns are engaged. I refer to the beef combine and the Standard Oil monopoly.

* * *

The power exercised by these large shippers over the railroads of the country is not confined to the products shipped by these concerns, but extends to many other products over which they exercise control through the use of their cars. Shipments in the fruit business, the poultry business, the dairy business, the brewing business, are all largely under the control of these concerns through the influence they exercise by forcing their private cars on the common carriers of the country in the shipment of these products. No railroad can declare its independence of them. None even dares to try such a thing, though many millions of dollars' worth of cars owned by the railroad companies are sidetracked, while the roads are forced to pay exorbitant mileage charges for the use of the private cars of these shippers, which, of course, in the end, becomes a charge upon the public.

Mr. Martin, of South Dakota, said:

To my mind, much greater and more important are the provisions providing for a quick and ready means of relief

against rebates, discriminations, private car abuses, excessive icing charges, unreasonable terminal charges and elevator abuses. These are really the far greater class under which the people of the entire country, the small shippers, are complaining; and if this bill—which I hope it will—can afford a means of relief, will minimize the injuries that are coming to the common shipping public by reason of these abuses, it will be a move in the right direction. I do not regard this measure in any sense as legislation adverse to the railroads of the country.

* * *

The trust problem is a much more modern problem than we sometimes stop to think. Epitomized in few words, the trust is a combination of corporations. In the United States we have advanced to a place where we do not fear anything simply because it is large; but there has come within the past ten years, the adaptation of a principle by which competitors by consolidation can, over night, if you please, absolutely change and control conditions in commerce in any particular line of industry. It is this principle of combination, of sudden amalgamation, that is, to my mind, the chief vice of this system.

Mr. Sibley, of Pennsylvania, said:

It is not a pleasing position for anyone to occupy who would appear to be in opposition to gentlemen on both sides of this Chamber who, in the ordinary conduct of our national affairs, betray the highest character of wisdom, conservatism, and faithful guardianship of the public interests. One may well doubt his own position when he gets up against the solid mass of that class of matter. None the less, it is the duty of the individual Representative, when he is seized with the conviction that the common weal is imperiled by pending legislation, to have the courage to act out those convictions of individual duty, even if they are not in harmony with those whom he has learned not alone to respect, but to love. One year ago we had before this House a somewhat similar proposition known as the "Esch-Townsend bill." We were urged with speed for the passage of that bill, those opposed to it having less than two hours accorded for the presentation of their views. We were told its immediate passage was demanded for the effect it might have upon the country at large, and especially upon that other body that sits at the other end of the Capitol.

* * *

We are coming by rapid steps of progression to government ownership. Government control has not exhibited in that portion which has heretofore come under our observation such marvelous performances as to commend it to us. Here in Washington we have presented the best examples afforded of it. We have the Government Printing Office, and there is not a gentleman here who does not know that he could have a speech printed—and I could have this one printed if I wanted to—very much cheaper in a private printing office, probably at a third less than at the Government Printing Office. I am not going to have it printed, though, at any price. It costs three times more than it would cost at a private or individual outside printing office.

* * *

Mr. Chairman, in this measure now under consideration it seems to me we are invading the realm of socialism. This bill should be properly termed "A bill to fix rates by political agencies," and, in the language of another, "To establish the business of transportation by lawsuit." You have got to commence with a legal decision at the beginning, and you have got to take it at every point along to the very end of the chapter. If I construe it rightly that is the effect of it. If you yield to the sentiment that is coming up today—and we have had the warnings that worse is to follow—if you yield today to Mr. Hearst and Mr. Bryan, who declare that they

support this measure, not as a panacea, not as a cure for all evils, but that they have indorsed it as a step in the right direction toward government ownership—if you yield to this sentiment, you must realize in what direction you are going.

* * *

All this trouble springs mainly not from individual shippers, because the Interstate Commerce Commission not once, but over and over again, have said that as a whole rates are not excessive upon American railways; but the complaints have originated from communities—of the preferential or the differential. When the Soo Canal was built, opening up the waterways and making possible the passage of the largest ships into Lake Superior, the wheat that formerly came to Milwaukee and made it the foremost wheat market on this continent, ceased to come there. It went around through these waterways, and Minneapolis was sending her wheat and her flour out through the highway of the Great Lakes. The railways lost their traffic, and in order to compete with that waterway they reduced their rates on wheat and flour for export or for domestic markets. The result was that no more wheat came to Milwaukee, and she, seeing that she was not getting the wheat, complained of those rates, and so there started the rivalry between Milwaukee and Minneapolis and between Minneapolis and Duluth as to merchandising; and so it has been all over the Federal Union; Charleston, angry because she is not a basing point, Savannah getting the advantage.

* * *

Fix your law making it a crime punishable by imprisonment and a fine of even \$100,000 to give a man a rebate. Make every employe or official of the transportation company, or employe or official of a firm or corporation who receives that rebate, a party criminal, if he, having knowledge, conceals such a crime. Give to the informer one-half of the fine so levied, and I will undertake to say there is not a transportation company on this continent who would take the risk of having itself blackmailed, or going to the penitentiary staring it in the face, with five or six thousand employes knowing the fact that there had been rebates given. Draw your bill as drastically as you please; make it even to the taking away of the charter of the transportation company; draw it along the lines of regulating icing charges, discrimination, or rebate, and I will be with you on every proposition but the one main proposition, that there shall be delegated to a commission appointed by political agencies and more or less-influenced thereby a power greater than was ever granted to a potentate or ruler on this earth—the power to legislate, to construe judicially, and to execute.

Mr. Heflin, of Alabama, said:

It is not the policy of the Democratic party to interfere without just cause with the interest of private concerns. Nor does it desire to fetter commerce by unjust restrictions, and it is not her intention to confiscate the property of the railroads, and the railroads do not believe that such is her desire; but the party does insist upon one just and fair standard of conduct for all public interests. This is Democratic; this is right. Yes, the railroads have rights, but they do not possess all the rights. Their interests should be considered, but theirs are not the only interests to be considered. Until we regulate them in the interest of fairness and justice to all concerned we will not have discharged our duty. Freight rates affect the price of every article that goes into the home of the consumer. The people do not want to cripple or hurt the legitimate interests of the railroads, but the people do want fair treatment at the hands of the railroads. There is no use to be excited because the people are becoming aroused and are manifesting an interest in their own affairs.

* * *

When we urge the necessity of regulating freight rates we are confronted with the statement that the rate is lower here than in any European country. Railroads have already com-

bined in all the European countries, and in this Republic of the West they are combining with unprecedented rapidity, and unless Congress lodges the power somewhere they will, when the combination is all perfected, charge as much, if not more, than they charge in the European countries.

* * *

It is unfair for them to enjoy the privileges that they enjoy today—the right of eminent domain, and all this hedging about by the law—that you and I do not enjoy, that the producer and the shipper do not enjoy; to allow them to come in competition with you through their productive utilities, showing favors to themselves. What is to prevent them from getting their grain into the market first? They own all the transportation facilities. Let the bill provide that they shall give every year a detailed statement of every dollar that they own in any utility in the Government. Let us see how the combinations are worked; let us see how many wheels are working within wheels—make a full investigation of this matter.

Mr. Goulden, of North Carolina, said:

The bill (No. 12987) under consideration is in the main the more satisfactory railroad rate bill than ever hitherto offered to Congress. In my opinion it is open to criticism, which may, however, be said of any proposition. As the unanimous report of a committee made up of able and painstaking men it is entitled to respectful and favorable consideration. While there is room for honest differences of opinion, the report shows that the views of the Democratic minority have received attention, and in most cases have been adopted. I congratulate the committee on the excellent report, and, under the circumstances, all things considered, I shall vote for it.

* * *

As railroad agreements or pools are against the law in the United States today, the roads have no way in which to protect themselves against the shippers except by publication of their own tariff schedules; and hard experience has shown how futile this is. It is admitted by all at this time that the shippers practically fix the rates, and that the roads have either to take the freight at the rates fixed by the shippers or go without the business. To illustrate: Suppose a large shipper in Chicago demands a certain reduced rate on heavy shipments to New York, the business to be steady all the year round. All the roads out of Chicago refuse to cut below their printed schedules, and it is up to the shipper. He immediately concentrates all his shipments on one road; the others get nothing. These others immediately suspect that the favored road has given a rebate (as a matter of fact it has not); they immediately, in the interests of their stockholders, give in, and the shipper has his way. By this sharp trick he has compelled all the roads to violate their schedules in spite of themselves, especially since the law forbids them to get together to find out the scheme.

* * *

Therefore the evils complained of today are not the evils of the railroads (for they certainly dislike to make rebates or lose income), but the evils of the greedy, money bloated shippers, who comprise the large manufacturing interests of the country, all the dealers in foodstuffs, raw materials, natural products, minerals, &c.—for instance, iron and coal—in fact, all the business corporations of the country. They are the same people who are protected by the present Republican tariff, and the cry for rate legislation is simply their cry for greater profits through lower freight rates.

* * *

The Supreme Court has decided in a large number of cases that, while rate making is legislative, the justice or reasonableness of the rates after they are fixed is a matter for the courts—that is, all questions arising between the rate making power and the shipper or carrier must be decided by the courts. I

believe that the Hepburn bill provides that the Commission will fix the rates, which are to go into effect at the end of thirty days, and that the courts will pass judgment as to their fairness whenever questions are raised.

Mr. Burke, of South Dakota, said:

I do not think that any person will seriously contend that the subject of dealing with the common carriers of the country and their regulation can be considered for a moment as private interests. Before the gentleman from Pennsylvania finished he practically indorsed every word in this bill with the one exception of the power to clothe the Commission with the right to make a rate after finding a rate complained of unreasonable. The gentleman said, on the subject of rebates, that if there were rebates being practiced now it was because some officer charged with a duty of seeing that the law was enforced was not discharging that duty. The report of the Commission, all of the evidence upon this subject of rebates, shows that rebates are being indulged in quite generally throughout the country without any violation of the Elkins Act whatever by means of practices or instrumentalities, such as refrigerator cars, icing charges, elevator charges, terminal and side-track facilities, that rebates are given that are in fact rebates just as if the Elkins law had never been enacted. This bill makes it impossible for those practices to be continued if it should become a law. Why, the gentleman said that he would make a fine, I think, of \$100,000 for a carrier to give or any person to receive a rebate. Why, apply this argument in the early part of his speech; he would not have any legislation at all governing or regulating the railroads of the country.

* * *

I want to say that I am for this bill because I believe it is honest, because I believe it is right, because I believe that Congress twenty years ago thought they had conveyed to the Commission the power that is sought to be given by this bill. It not only gives that power, but it goes further, and regulates many abuses that are now being indulged in by the railroads, and will, I think, make, with existing laws, a law that will be all that is necessary for many years to come; a law that will be not only fair to the railroads but do justice to those who have to do business with the railroads.

Mr. McCall, of Massachusetts, said:

If the pending bill made an effective response to public opinion upon the railroad question, it would deal in the most comprehensive and the most particular terms with rebates or favored rates, whether given directly or in any of the indirect forms in which they have been extended. A secret rate lower than the rate which is published for all or valuable concessions given to shippers, under whatever subterfuge, are obnoxious to the law, which contemplates not merely a just and reasonable but an equal rate. What is demanded to meet the real evil, and what was demanded by public opinion until its attention was diverted to an utterly irrational and haphazard remedy, is legislation making clear beyond question the right of every man to equal treatment and giving him the amplest remedy for every violation of his right. The private car, refrigerator car, the industrial switch, receiving a part of the through rate as if it were an independent line, every instrument of favoritism and injustice, had justly received public condemnation. These evils were dealt with in general terms by the amendment known as the "Elkins Act." But that act needed to be broadened; it needed to be made more specific, so that it should prohibit unequal treatment under whatever guise, and then it needed to be enforced, not merely by a fine, but, in clear cases of evasion, by imprisonment both for the giver and the receiver of the secret rate. If a law had been passed upon these lines one year ago, every demand of what can justly be called "public sentiment" would have been satisfied. The Republican National Convention in 1904 made no declaration whatever regarding railroads. The Demo-

cratic convention declared against rebates and discrimination. Rebates and discriminations in all their protean forms were the real evil. The President in his annual message declared against them, but he promulgated as a remedy that the Commission be given authority to fix railroad rates whenever a complaint should be made.

The leading authority upon railroad economics in the British Empire said, not long ago, of the bill passed by the House last winter in line with the President's recommendation, that it would have done no more to stop rebates than would the re-enactment of the Magna Charta. I endeavored to point out at that time upon this floor that there was no possible relation between the giving of rebates and the fixing of rates by a commission, and that a railroad could, as easily give a criminal rebate from a rate fixed by a commission as from one fixed by itself. And the advocates of this legislation have refrained from penetrating the awful mystery and have discreetly permitted the relation between rebates and commission rate making to remain a secret until this day.

* * *

The issue of political rate making in the Congress of the United States is not the result of any evolution or of any expression of public opinion, but it is a mere fungus growth. It sprung up in a night. It grew out of the Presidential *non sequitur*, and I am very willing to concede that a *non sequitur* is something in which a busy man may sometimes indulge. If teachers of logic are looking for a perfect example of a *non sequitur* for their classes, I commend them to the statement of the evils and the statement of the remedy contained in the President's annual message to Congress in December, 1904.

* * *

The fundamental question involved is, Do we want rate making by a Government board? The burden of proof rests upon the man who contends that such a system should be substituted for the system at present in force. It is upon the advocates of this bill to show that we should set aside the American system of fixing freight rates which has given us rates hardly half as high as are paid by the other great countries of the world, although our railroads pay their labor twice the wages paid in the other countries. The burden of proof, I say, rests heavily upon those who would radically substitute for our present system the foreign system of fixing rates by the Government. Magnificent platitudes about eminent domain and our duty to exercise the great commerce powers of the Constitution will not sustain the burden. Give us a reason why we should discard a system which has been a success for a system which has been a failure.

* * *

The rate making of our railroads is done by an army of tens of thousands of men, picketing every part of the country.

* * *

The flexibility of this system, where rates are fixed by economic laws, is infinitely preferable to the wooden system established by this bill, where, after a rate has been determined, you walk off and leave it a fixed and immutable fact for three years, unless a decree can be obtained from an overworked Commission changing its decision and establishing a new rate. And by the time the authority would be conferred the necessity for a change of rate would probably have passed away.

* * *

Then, the port-preference clause of the Constitution would prohibit the Commission from giving one port an arbitrary differential rate better than another port. Do away with these differentials and you strike a mortal wound at competition.

* * *

You propose to confer upon a mere human agency a practical task that would be superhuman. It is made their duty upon complaint to revise any and all the thousand millions or more freight rates in the country and an untold number of

passenger rates. In addition to administrative functions, in defiance of the Constitution, you confer upon them, as I have said, judicial and legislative powers. They are to be vested with authority over a dozen billions of property and nearly a million and a half of employes. The enormous magnitude of the task is admitted, but there is to be an easy solution for it all.

* * *

We are to have a Commission made up of prodigies and paid splendid salaries.

* * *

But the difficulty will be not so much with the men as with the system. They will be unable to perform those impossible duties, and then their work is near the political line, across which they will inevitably drift, and, as has been attempted already in some of the most enlightened States in the Union, some day, acting under pressure or under the spur of ambition or of a desire to "do things," some great schedule is liable to be broken into atoms, and the commerce and industry of one section may be arbitrarily transferred to another. I believe that it is vastly better for the interests of the country, so long as rates can be fixed under the operation of economic laws, to reject the artificial method proposed by this bill, which makes of a commission a sort of Providence with power to create one city and destroy another.

It is an extraordinary power—the power to fix railroad rates. It might be so exercised as to act as a tariff between States to strike down trade between remote sections of the country; to dissipate the foreign and domestic commerce of New York; to cause the great city of Chicago, like many another exhalation, to sink back again in the marshes from which she sprang. And yet gentlemen contend that this power is so unimportant that we can call it "administrative" and delegate it.

* * *

It is contended that the policy of national rate making is necessary in order to avert governmental ownership. Either governmental ownership is an evil or it is not. If it is a wise policy, we should embark upon it, but if it is an evil, the way to avert it is certainly not to take the first long step from economic rectitude that lies in its direction. Some very vicious policies have threatened our country and have been made dangerous by our taking the first step as a compromise. That is true with reference to inflation. It is emphatically true with reference to the coinage of silver, when the reason was given for taking repeated steps in coining or buying that metal that they were necessary to avert free coinage, until finally we had thousands of tons of silver stored in the Treasury, and it was only by an almost unexampled act of Presidential heroism that we did not go to the silver standard by the mere force of gravitation.

* * *

There is no species of property that deserves the grateful consideration of Congress more than the railroad property, for it has conferred incalculable benefits upon the country. Without the railroads our population would be confined to the seaboard and the water courses. Three-fourths of the country would be unsettled and uncivilized. But largely as a result of daring investments that have been made we have to-day, with one-twentieth of the population of the globe, a valuation of more than a hundred billions, or one-third of the entire capital of the globe.

* * *

And then there is centralization. At the rate we are now moving it will not be long before we regulate everything and everybody from Washington. You cannot govern the whole universe from a single point and have a shred of liberty survive.

Instead of chasing every will o' the wisp that shows itself upon somebody's horizon, let us then guide ourselves by the great first principles of the American Government. And to

return to this bill, you will have, in my opinion, a better railroad system and a better people if you safeguard in the courts the fundamental right of every man to a reasonable and equal rate and permit those rates to respond, as they have hitherto, to economic forces. In the conditions existing today I believe the people would shrink from governmental ownership, because of the expense and danger incident to governmental management. But that expense and that danger would certainly not be less when you make our Interstate Commission general managers of railroads built and owned and operated at the risk of private capital.

Mr. Perkins, of New York, said:

It is painful not to share the sweet and childlike confidence that has been expressed by so many gentlemen that with the passage of this bill the era of railroad millennium will come. It is disagreeable, in a chorus of universal harmony, to strike the one solitary discordant note. I do not rise here to say that I think there are no railroad evils. I rise to express my fear that, as often happens in attempting to work cures of business conditions by governmental regulations, we shall go out of the frying pan only to find ourselves in the fire.

* * *

Now, this much must be said, that the railroad system of this country, whatever its faults, is a better system, judged by its results, than any other. No other one industrial force has had so much to do with the rapidity with which this country has been built up as our railroad system. The district represented by my friend from South Dakota (Mr. Martin); who made so admirable a speech a moment ago, would this day, if it had not been for our railroad system, be governed by some Pawnee chief. Instead of politicians quarreling, Sioux Indians would be scalping each other had it not been for the rapidity with which the railroads of this country have pushed out there. That ~~does not~~ show that there are no faults in the system, but it ~~does~~ show that its general results have been very extraordinary.

Now, it is proposed, in order to meet certain evils—we concede that they are evils—to have a system of Government supervision; and surely, Mr. Chairman, the greatest power that can be exercised over any business, the greatest power that can be exercised over the railroad system, is the power to regulate rates. The essence, the foundation, the lifeblood of every business depends upon how much money it gets for the work it does or the goods it has to sell.

* * *

Railroads make mistakes. They not only make mistakes, but try to get unfair advantages often. But this thing is sure—the railroad enterprises, like all the great business enterprises in this country, have become the greatest in the world because they have had the most intelligent and enterprising men to manage them. No railroad can succeed, no railroad ever has succeeded or ever will succeed, except by building up the interests of the people with whom it is to deal. There is no railroad paying dividends whose only patrons are bankrupts. There is no railroad gaining wealth by bringing goods from any people in a country, or any portion of the land, that does not make it possible for the people in that portion of the land to send their goods by freight at a livable rate. If it does not do that, as I say, instead of great interests growing up along its line it has no cities along its line; instead of a country filling in as the Western country has filled in, it would run to region of barren acres and alkali plains. So the railroads have necessarily to govern their action by the motive of an intelligent self interest.

Mr. Knapp, of New York, said:

That railway transportation has been one of the most important factors in this development must be justly conceded. That American railways, which span the continent and vein the country, are unrivaled in the railway world, is also our just pride. But all of this does not destroy the fact

that these corporations, by virtue of charter rights and also their relationship to commerce and the public, should be so managed or regulated that they do not oppress but serve the best interests of the people. The very fact that the relationship which exists between railway transportation and the people is, and of necessity must be, interdependent, justifies the Congress in so regulating the one that it shall fairly serve the other; in other words, justifies Congress in so regulating or in so providing for the regulation of transportation rates that they shall be equally just to all localities and equally fair to all shippers; in still other and better terms, justifies Congress in so legislating that, in the words of the President, the "highways of commerce may be kept open to all on equal terms."

* * *

Discriminations in transportation rates, whether by rebates, private car systems, terminal facilities, or in any other manner, should be effectively abolished, and uniform rates, equally just to all, should be effectively established.

* * *

During the nearly nineteen years that the Interstate Commerce Commission has been in existence, more than 4,000 complaints against common carriers have been lodged with the Commission. These complaints, and the issues involved in them, have been disposed of in various ways; some by dismissal, some by adjustment with the railways, some by hearings had and by decisions of the Commission, etc. That the law has been productive of good, and that the Commission has, with signal industry, fidelity and ability executed its trust and served the public welfare cannot be successfully questioned.

* * *

This amendment corrects that fatal defect in the original law and clothes the Commission with authority not only to investigate the complaint of the shipper, but, if the rate so complained of is found to be unreasonable, then to say what shall be a reasonable and fairly remunerative maximum rate or charge for the future, and also to make an order requiring the railway or common carrier to make such rate operative within thirty days from the date of the order, thus giving immediate relief to the shipper.

* * *

It has been stated that rate making is the most complicated and difficult work connected with transportation. Doubtless that has been correctly stated, but whether so or not, it certainly is one of the most important. The contention that competition is a regulator of freight rates is not, in the main, tenable. That, by reason of combinations, has gradually ceased to be a controlling factor, and cannot now, except in limited and exceptional cases, be depended upon, as controlling in regulating rates.

Mr. Kennedy, of Ohio, said:

The charter of a railroad corporation, when accepted and moneys are spent in accordance therewith, becomes a contract and rights vest thereunder, and it becomes important to inquire what those rights are. It has been judicially determined that the right to charge toll over the railroads of the country is limited to such charges as are reasonable. This principle has been recognized by every State legislature in the fixing of maximum rates. Then the railroads of the country, it will be seen, have a vested right, so long as their franchises endure, to collect reasonable tolls. The power has been delegated to them to levy a tax upon all interstate commerce passing over their road, provided that levy be always reasonable. Beyond this they have no right to go. Thus far their right is absolute—surrounded by all the guaranties of the Constitution protecting private property and vested rights under contracts.

While, therefore, railroads perform their duty strictly there is not the slightest power in the legislative arm to touch

them, but if they go beyond the limits of their rightful authority and levy an unreasonable and excessive toll, or oppress one business to help another, make unreasonable exactions upon one set of shippers to wickedly give the money in rebates to another more favored, they should be promptly driven back under the lash of the law.

Mr. Sterling, of Illinois, said:

The present day centralization of great wealth and consequent great power about public utilities creates a condition which will eventually result in one of two alternatives, either government regulation or government ownership of these vast properties.

* * *

I believe this measure to be conservative. It does not involve a subject that requires radical or extreme action, nor is it a theme that will justify intemperate speech. It calls for a cool and fair discussion of the legal and practical aspects of railroad rate legislation as proposed by its provisions.

* * *

I am certainly of the opinion that when the courts come to pass on the constitutionality of a great public law like this they will apply those two rules of construction, which authorize them to consider the conditions to which the law relates and which require them to give to the terms of the Constitution their broadest significance.

Mr. Russell, of Texas, said:

Why, Mr. Chairman, the principle of the regulation of railway rates by commissions is too well settled to need discussion here. There are sixteen States in the American Union today with railway commissions clothed with mandatory powers in the regulation of State railway rates. There are twelve other States with railway commissions that possess advisory powers. Each one, I think, of these State commission laws creating commissions with mandatory powers has been before the courts of last resort, either in the State where they were created or in the Supreme Court of the United States, and their constitutionality has been upheld, though they were provided for in State jurisdictions where the great co-ordinate departments of government were divided into three branches—legislative, executive, and judicial—just as they are under the Federal Constitution. But these State commissions, on account of the constitutional limits between State and Federal authority, only reach about 25 per cent. of the railway traffic, and so public attention has become fixed upon Congress.

* * *

What is a maximum reasonable rate? It is a rate beyond which to go one iota would be extortion. A maximum reasonable rate! Suppose that were written into the law and a case should arise between a carrier and a shipper. Now, you cannot take away from the courts their power to review an unlawful finding by the Commission. It is fixed in the Constitution, and it is inherent in the judicial as one of the great independent co-ordinate departments of the Government. Now, the Commission would be empowered, under this suggestion of the President, to find the "maximum reasonable rate"—that is, in my judgment, it would be limited to fixing the dividing line between reasonableness and extortion. The finding of the Commission can be set aside by the court upon two grounds, one of the grounds being that they have exceeded the authority granted by the act of their creation, and the other where they have fixed a rate which violates the Fifth Amendment to the Constitution as being in effect confiscatory. So the Commission finds a rate. It attempts to find and fix the "maximum reasonable rate." But it makes a mistake in judgment. The maximum reasonable rate, to illustrate in this case, we will say, would be 50 cents per hundred; the minimum rate would be 40 cents per hundred. To go above 50 would be extortion; to go below 40 would be confiscation. The Commission attempts to fix a maximum reasonable rate and fixes it at

45 cents, and the case goes to the court. The court will say, in my judgment, that the Commission has exceeded the power given to it by the act that created it. I think that is the fair intendment of the reasoning in the Maximum Rate case. The rate assailed by this Commission was an unreasonable rate, and it substituted a rate that was reasonable, but not the maximum reasonable rate, and the authority conferred in the act was to find the maximum reasonable rate, and therefore though the rate is not extortionate or confiscatory, yet, not having fixed the maximum reasonable rate, they exceeded the power given in the act of their creation, and the court will reverse them, and the court itself, being powerless to relieve because the court cannot fix a rate for the future, the shipper will have to go back and start it all over again.

* * *

Now, sir, the power of Congress to regulate commerce between the States has been held by the Supreme Court to be as absolute as the power to regulate commerce with foreign nations, and in the case of *Gibbins vs. Ogden* the doctrine was announced, which was emphasized in the case of the *Gloucester Ferry Company vs. Pennsylvania*, that this power to regulate means the power to prescribe the rule by which commerce shall be conducted—that is, the conditions upon which it shall be conducted. The power of Congress to regulate commerce was one of the great causes that produced the constitutional convention of 1787. In my judgment, that convention would not have been called but for the lack of this power under the old Articles of Confederation. In my judgment, that Constitution would not have been ratified but for the lack of this power, and we are bound to presume that the framers of the Constitution intended a regulation which would be effective.

Mr. Thomas, of North Carolina, said:

There are thirty-two State railroad commissions, twenty-four of which have power to make rates, as follows—the procedure used is as follows:

Alabama-Arkansas—After giving railroads ten days' notice.

California—Are effective after twentieth day of service on railroads.

Florida—After giving notice and hearing all parties interested.

Georgia—Joint rates can be made only after hearing, with thirty days' notice.

Illinois—After furnishing railroads with printed copies of schedule.

Indiana-Iowa—Must give two weeks' notice after revising maximum rate.

Kansas—Can raise rates only after six days' public notice.

Kentucky—After ten days' notice and hearing of railroads.

Louisiana-Maine—After due notice and hearings of railroads.

Minnesota-Mississippi—After ten days' notice to railroads.

Missouri-New Hampshire-North Carolina—North Carolina corporation commission, with powers to fix rates subject to right of railroads to file exceptions within ten days and be heard.

North Dakota—After notice to all parties and hearing.

South Carolina—Thirty days' notice before rates become effective.

South Dakota—After ten days' public notice and hearing.

Tennessee—After ten days' notice to railroads.

Texas—After ten days' notice to all interested parties, with hearing. Emergency freight rates after three days' notice to railroads.

So more than half of the States of the Union, for more than a quarter of a century, have had statutes delegating to a commission a rate making power. These cases have frequently been before the Federal courts and the Supreme Court

of the United States, and in every instance, after full argument and consideration, the courts have held the statutes valid and constitutional, and that such a commission was an administrative board, exercising valid and legal authority.

Mr. Gillespie, of Texas, said:

I wish to call attention just for a few moments to the non-competitive condition of interstate railway traffic that makes this legislation necessary. There are two ways in which to regulate rates—one is through the manner undertaken in this bill and the other is by the natural competition that ought to exist between the common carriers of the country. I do not hesitate to say, Mr. Chairman, that if we had competition it would be the most effective and the best remedy that we could offer to the people of this country. I do not hesitate to say this: That if this legislation is to have the effect of putting our people to sleep and say to them that they can find a full remedy in this legislation, and they may let competition be destroyed, it will be an evil day for this country when this bill becomes a law. We are told here that we should fear socialism, anarchy and all of those evils. I wish to state this: That the men who insist upon turning the destinies of this country over to the so called "captains of industry," that are responsible for the great railroad combinations and the destruction of competition, are the advance agents of socialism. They are bringing about a condition in this country that makes possible Government control and ownership; that makes possible all that we fear from socialism, and I agree that that condition is un-American, and that if we ever do embark upon that sea it will mean a revolution. But I repeat, the men who say that these claimed "captains of industry" ought to be allowed to control the commercial conditions of this country, that they ought to be unrestrained in bringing about these non-competitive conditions, are the advance agents of socialism, because they are making a condition that makes honest and patriotic men stand and think. What shall we do if we are forced to the choice between public ownership, where those in control at least have patriotic intentions, though inefficiency in public control may be conceded—if we are to choose between this public control and private control, where the prompting or the motive is personal greed, how will the American people settle the question? Our people are going to tear from their throats the hand of private monopoly. They can't do otherwise and retain a decent claim to being free American citizens.

Mr. Murdock, of Kansas, said:

There are two sections in this bill that are not frequently mentioned which are potent. One provides for the uniformity of railroad accounts and the other for their inspection. It will be interesting to watch the tribulations of those two provisions before this legislation is finished. I have been a patient listener to all the arguments made here for the last six days—none more so than I. On its economic side four assertions have developed in the debate and four answers, as follows:

First assertion: Average rates showed for years a decrease and are still below those of other countries. The answer: Reasonable average rates do not preclude the existence of excessive charges in particular instances.

Second assertion: Rates are governed by natural laws, competition being the regulator of prices. Answer: Railroad competition exists only in particular places, and as consolidations continue less and less in those places. Railroad services are not private, and for that reason economic principles cannot be wholly relied upon. Natural laws do affect the average rate, with but little effect upon a particular charge.

Third assertion: The power given to make any rate is the power to make all rates, because of the interdependence of rates. Answer: Traffic managers constantly change their rates without creating disorder.

Fourth assertion: It is impracticable for public authority to make rates, because there is no standard of reasonable-

ness. Answer: It is impossible to show that a rate is unreasonable *per se*; but it is legitimate to make comparisons, and rates are so made.

Mr. Hubbard, of Iowa, said:

What is the king's highway, the natural law of transportation? It is that every man shall be given an equal, a fair and an open chance upon the king's highway. That is the law of transportation, and it is that law which has been persistently transgressed. I believe, sir, that a square deal is a fair deal, fair to all alike, fair to us of the West. We ask for no pap. We ask for no discriminatory railroad rates to help our industries. Our cornfields laugh at you, our wheat fields smile golden beneath the sun and ask not your help. We will take care of ourselves. Give us a square deal. You will continue to eat our bread and meat. You may favor more farming, we more manufactures. It is asked, What is a square deal? It means a deal from the top and not from the bottom of the pack. It means a deal in which every man gets his own hand, in which every man who sits in the game is not expected to have cards up his sleeve, in which the whole table is dealt to fairly, and there are no marked cards in the deck.

* * *

It is fortunate, I think, that this legislation was postponed until this session. This bill of the committee is a wiser bill than was presented, either by the majority or minority members of the committee, during the last Congress. It is more comprehensive in its scope, more widespread in its effect, and will be more beneficial in its results. It shows the wisdom of delay and of taking into conference the people of the United States and of giving them due and careful consideration in a question like this.

Mr. Burton, of Ohio, said:

In no country are the corporations so powerful or so unrestrained as in our own. Even in absolute and limited monarchies the power of the crown is brought to bear upon their operations in such a manner as to restrain them within narrower limits and to create a stricter responsibility. In some States of the Union the extent and the variety of powers granted to them are such as to be inconsistent with that opportunity for individual action and that equality which are at the very foundation of our institutions. A principal cause is the fact that our enterprises are conducted upon an enormous scale. Those of us who are not yet past middle life can remember the time when a large share of our manufacturing was done in the little shop. The employer had ten, twenty or thirty employees. He mingled with them in their work; sometimes took his place at the bench; knew of the conditions in which they lived; informed himself whether their children were at school or not; and if one of them should die, he joined the funeral cortege that went to the hillside cemetery to see his employe laid away in his last resting place. It was like a golden age of co-operation and industrial peace. Now all this is changed. As we approach the factory we find that it covers acres of ground. There is an army of employees within. We recognize the whirlwind sound of steam, the din of a multitude of wheels, the intricacies of modern mechanism; tools and appliances which can say to the workman: "I will partake of your toil with muscles which never grow weary and with a breast which never faints." Many an employe regards his employer as one who doles out from a great accumulated fund only just so much as he must. He does not regard his wages as having any relation to the expenses and profits of the business. On the other hand, the head of the establishment is prone to look upon his employees as but mere cogs in the great mechanism which performs his work.

* * *

Two things are to be considered in the regulation of railway rates—discrimination between individuals and discrimination between places. The discrimination between places it

may be almost impossible to do away with, because of differences in geographical location and means of access. One place is located on a waterway and can obtain cheaper carriage of freight on that account. Another may be located where there is a plurality of railways and there is a certain element of competition. That man would be very bold indeed who would seek by legislation to establish rules under which it could be said that all places in the country were to be treated alike. But as regards discrimination between individuals, there can be no question but that it can and should be corrected. The very basis of all our laws is equality of opportunity. The great combinations which have grown up in the country have attained their colossal development very largely because of discrimination in freight rates. We cannot have equality, industry cannot gain the most symmetrical and helpful growth, unless the least shipper—the one who forwards the least amount of freight—can have his goods carried on the iron rails just as cheaply and just as favorably as the greatest combination.

Mr. Madden, of Illinois, said:

The power of the Interstate Commerce Commission should be enlarged so as to enable it, subject, of course, to review by the courts, to fix maximum rates that would not be extortionate. I believe that Congress can confer power upon the Commission to determine what the maximum rates should be without violating the Constitution; that is, Congress can, in my opinion, delegate that authority to the Commission.

* * *

To the railroads we owe in great part not only the prosperity but the happiness of our people. Upon them depends the continued success of agriculture, commerce, and manufactures. Without their beneficent aid we could not today hold the first place among the producing nations of the world. They are our greatest benefactors. Let us, then, do justice to the railroads, to the shipper, and to the people. Let us not weaken the charm of the word "honor," upon which is based the stability of our country.

Mr. Littlefield, of Maine, said:

I want to say that I concur with the President, and I agree with the distinguished chairman of this committee. I do not believe that a tribunal of seven men should be at one and the same time a detective agency, a prosecuting attorney, and a lord high executioner, even though railroads may be the subject aimed at. I agree with the President of the United States, and with the distinguished chairman of the committee. Now, as to this assertion of the chairman as to the effect of this bill, I feel bound to say, taking into account his great ability and integrity, when I came to read the bill I had grave doubts of the fact, but on more careful reading of it, and I submit it to the consideration of my distinguished friend, it satisfied me, Mr. Chairman, that while it may not have been intended or expected, that this amendment contained in this bill does, under the circumstances, confer precisely that power.

* * *

Now, if language in a Presidential message is entitled to ordinary construction, I submit that that conveys to the ordinary mind the meaning that the President of the United States contemplated, whether constitutionally or otherwise—I have not reached the discussion of that point as yet—that the same legislation that invested this tribunal with this extraordinary autocratic power would also vest another tribunal with a power to review the determination of that tribunal. Whether it is constitutional or not raises another question. I would say, in connection with this question, that under these peculiar circumstances and curious conglomerate of legal relation, that this Commission undoubtedly, when it undertakes to determine whether or not an existing rate is fair or reasonable, acts in a judicial capacity, and it is also absolutely true, Mr. Chairman, that when it undertakes to say what a rate shall be it

acts in its legislative capacity; so that we have, independent of the question of review, a curious conglomerate of legal powers in this incongruous, administrative, judicial body; a union of judicial power, executive and legislative power supposedly to be exercised, aye, must be exercised, according to the genesis of this bill at one and the same time by the same tribunal.

I will say as to that proposition that I am not clear whether it is possible, whether it is constitutional, whether it is proper for us to combine judicial, legislative, executive, and administrative functions in one and the same body at the same time, political in its character though it may be. I will say that there has not yet been any determination by the courts of the United States or any other courts that hold that that either can or cannot be done. The courts have talked about it. Judge Sage, in an oral opinion in one of the Federal reporters, said that this tribunal exercised a quasi judicial power as well as undertook to exercise a legislative power; but that is the foundation of your whole proposition—that you can combine in one body three—yes, three—absolutely distinct, independent, constitutional powers—judicial, administrative, and legislative.

* * *

Now, I wish to go further and say, in my judgment, this bill confers upon the Interstate Commerce Commission power over the preferential; and here again I regret very much to say that I am not able to agree with my distinguished friend, the chairman of this committee. I want to call attention right here to this important fact: Is there any agitation today in this country, is there any demand in this country, that this Interstate Commission should be authorized to put its hands upon the preferential in existence throughout the length and breadth of this land, without which business could not exist and interference with which would greatly impair business? What is the agitation and what is its strength?

Is there much said against the increase of rates or against excessive rates? Very little. The complaints are principally about rebates and discriminations, but little about excessive rates. And under those circumstances or conditions, has anything been said concerning the preferential rate?

We have the great authority of this committee establishing the fact that there is "but little complaint," and that the recommendation of the President does not include "the relation of rates." This ought to settle that question.

* * *

I will not take the chances with any political tribunal without revision or appeal and put into their hands these vast business interests. Worcester, the heart of the great Commonwealth of Massachusetts, represented upon this floor by a worthy and able son of a most distinguished sire, and presenting today the finest illustration of diversified manufacturing industry that can be found in the confines of this great republic or in any other land, is absolutely dependent upon its preferential long haul for the shipping in of its raw material and the shipping out of its manufactured products. I will not consent to put the fate of Worcester into the hands of any commission to say what its future shall be, whether it shall live or die, whether it shall flourish or whether it shall vanish as a manufacturing industrial centre; whether its manufactories, now busy and active, profitably employed, shall be silent, filled only with rusting machinery, and its houses, now occupied by an industrious people, shall in the future be filled with poverty, want and distress.

* * *

What would agriculture be worth if this Commission was to exercise an unwise and vicious power? I call attention again to that vicious power and the evil of its exercise over any industry, either of mines or mining, agriculture, manufacture or mercantile, as being without right of appeal from the autocratic fiat of this Commission when it is once issued. Only the railroad can interfere. Manufacturers, farmers, miners and merchants do not exercise any public franchise.

The Constitution does not guarantee them a reasonable return for the amount of money invested in mines and mining, in agriculture, or in manufacturing industries or mercantile ventures. They have to fight for their lives in the open market, and this Commission is to sit on the valve that controls the circulation without which they cannot live. I submit to the candid consideration of this committee, Mr. Chairman, that all of these interests are vastly more vital and more potent than the mere interest of the transportation companies themselves. Our industries furnish the vital life blood, the railroads simply the veins and arteries through which it circulates. The railroads have an opportunity to go into court and protect their rights and preserve their existence under the power of injunction, but these industries have not.

* * *

Let me call attention to what they say, and after I have called attention to this Commission I desire to call the attention of this committee to the possibilities inherent in this situation, the kind of Commission that we might finally land with, because, as I have already said, we are not legislating for tomorrow, we are legislating for years to come. I do not believe that Theodore Roosevelt would ever appoint men on that Commission who were not good men, and if certain men are appointed whom it is now suggested may be appointed I would very gladly join in saying that, in my judgment, it would be a very wise selection; but Theodore Roosevelt is not always to be President of the United States. We may not always control the policy of this Government. There may be other men to control it, and I shall refer to that a little later. What has the Commission done up to date? I try them not upon all the acts they have performed upon which the court has passed, but by every act they have performed, and I have here the record. I am going to take the cases that have gone to the courts of the United States for the purpose of determining whether this conglomerate Commission, consisting of judicial, executive and legislative power, has been able up to date, by reason of the uncertainty and indefiniteness of the situation, to reach wise and just and lawful conclusions. Here is the record: Excessive rates, Commission sustained, three cases; Commission not sustained, twelve cases. Now, then, if that is any criterion, they are four times as likely to be wrong as they are to be right.

* * *

Let me submit this proposition. I have said that Theodore Roosevelt may not always be President of the United States. According to his repeated declarations, he will be President for the balance of this term and no longer. And after that some other gentleman will be President of the United States. What is possible? I can imagine some man as President of the United States in whose hands I would not want to see vested the power to control this Commission of seven men, four to be members of one political party. How long would it take a President with a complacent Senate to remove enough to make four of his political party? And what if that political party happened to be the Populist party? I want to say here and now, in all seriousness, when many distinguished gentlemen who, not perhaps in connection with this question, sometimes lend their aid to the dissemination and the propagation of the ideas that tend to segregate a few individuals in the community into what is known as the "classes" and array against them the masses, nobody can tell who will be the President of the United States or what influence will be behind him. If you inflame the masses and preach and inveigh against what you call the "classes"—against invested capital—I warn you now that you may kindle a fire that you cannot stamp out when you get ready to extinguish it.

Mr. Williams, of Mississippi, said:

There has never been a court that I know of which has passed upon a railroad question that has not in some language or other expressed the idea that the railroad was a quasi

public body, exercising public functions as well as private functions. It is partly private in its organization, in its contribution, in its management. To a certain extent it is public in this, that it occupies the public highway and is subjected, like all highways, to the government of the State.

The State—using the term right now in the sense of government and not particular States in the Union—has exactly originally the same control over a railroad that it has over a turnpike, over a dirt road—the right to say where it shall run, who shall travel it, and on what terms; and there never was from the beginning of time in English-speaking countries a day when the State did not reserve to itself the right to say what tolls upon a highway should be, what tolls upon a canal should be, what rates upon a railroad should be. Why, in Great Britain they went so far that they always put the railroad tolls in the charter when they chartered a railroad company, until after a while, with changed conditions, the charter rates became so much greater than any rates that were actually charged that they organized the great canal and railway commission, which is exactly what we are doing here, and gave them power to do more than we are giving the Interstate Commerce Commission power to do under this bill.

* * *

Now, Mr. Chairman, as to the Federal Government taking too much authority upon itself in the regulation of interstate commerce, with regard to this particular question I want to say this to Democrats: They seem to forget one side of what old Thomas Jefferson said years ago. He believed in preserving inviolate the reserved rights of the State as the sheet anchor of local self-government and individual liberty, but he added to it, "and the delegated powers of the Federal Government in their full integrity as the only safeguard of national independence."

Mr. Hogg, of Colorado, said:

When I became a member of this House I promised myself that I would never ask the indulgence of the House to listen to me unless I thought I had something to say and ought to say it. It may be that you will conclude that I have violated my own limitations. If so, I can only say that I have not trespassed perhaps more than others who have gone before me in the discussion of this measure.

I understand it is claimed by the sponsors of this bill that it is an Administration measure. It was claimed by the gentlemen from Texas (Mr. Russell) upon yesterday that it was a Democratic measure; and I trust that there are none here or in the country at large who will conclude that the latter statement necessarily results from the former. However this may be, it is understood that this measure—that has the unusual experience of having the unanimous indorsement of the committee, both Democratic and Republican—has been practically formulated by the Interstate Commerce Commission, and is said to have the favor of the President.

These considerations, together with the many wise provisions contained in the bill, will lead us, no doubt, to give it our earnest support, although many of us may, and no doubt do, question some of its provisions.

There are but few phases of this question that I care to call to the attention of the committee, although the discussion has taken a very wide range indeed, and along lines, I am sure, concerning which our knowledge, to say the least, is extremely limited. That this is so necessarily arises from the vast and complex problems that are connected with the transportation question. When we stop to consider the tremendous impetus that has been received along every avenue of industrial activity, through the development of the railway, the ease and rapidity of communication between different parts of the country, and the distribution of the products of every portion to every other portion of our great domain, it ought at least to compel thoughtful action upon our part before we attempt to disturb the equilibrium of so vast a structure.

But, however vexing the problem may be, it must be met

resolutely and with a determination to so legislate as to bring good and not ill to those interests most vitally concerned upon the one side and upon the other. It is hard to conceive that there is any person who is not interested in some degree in this solution.

I have been much interested and instructed in the statements made here and elsewhere as to the evils that have grown up in the management of the railways of the country. That they are many and far reaching is admitted by all. That the benefits enjoyed from the operation of these vast systems are past calculation ought, I think, also to be admitted, and out of this mass of good and evil it should be our care to evolve some sort of adjustment that will prevent the wrong and secure that fair, just and reasonable conduct of affairs in connection with the management of the railways as will bring a benefit to the people as well as to the railways. A very considerable agitation has been carried on for the past thirty years concerning the proper and legitimate control of transportation companies. In many of the States legislation has been had, more or less stringent and with varying results, but throughout it all a steady advance, until, in most of the States having legislation upon the subject, a comparatively satisfactory conclusion has been reached. So very general had been the purpose to secure some satisfactory settlement of this question, and the several States being limited in the scope of their action to transportation wholly within the State, and this being upon the whole but a limited portion of the great bulk of the business carried on by the transportation companies, it soon became evident, if any lasting good was to be accomplished, it would become necessary for the general Government to take up the matter, in order that the traffic between the States and foreign countries might be regulated in order to secure the proper treatment of the whole subject.

In 1887 Congress, to meet this condition, passed what is known as the Interstate Commerce Law, which, with a few amendments, the most important of which is the Elkins Act, has remained in force ever since, but which, under more recent conditions, has been found to be inadequate to cope with the rapid developments of railway traffic.

The Interstate Commerce Commission was under that act constituted as an administrative board to consider any complaints that might be preferred against any of the interstate carriers touching their practices, both as to methods and rates. It must be acknowledged that this Commission, although presumably with power to correct the evils complained of, have so far been unable to accomplish much, owing to the lack of power to enforce their orders. This weakness in the original act is now sought to be overcome by the additional legislation now contained in the bill before us for consideration. It will be observed that this bill undertakes, in the first place, to extend the term "railroad" so as to include bridges and ferries, roads operated under contract, switches, tracks, terminal facilities of every kind, as well as depots, yards, and grounds. The term "transportation" has also been enlarged so as to include all instrumentalities and facilities of carriage and all services performed in connection with the handling of property.

We now come to the portion of the bill which seeks to enforce the doing of certain things and the refraining from doing certain things. We find:

First. It shall be the duty of the carrier to furnish transportation upon reasonable request.

Second. That all charges shall be just and reasonable and every unjust and unreasonable charge is prohibited and declared to be unlawful.

Third. The carrier shall keep open to public inspection schedules, which schedules shall contain the charges between all places where persons or property may be carried, the classification of freight, as well as the terminal charges.

Fourth. A provision against changing the schedule except upon thirty days' notice, and an inhibition against charging any greater or less amount than that fixed in the schedule.

Fifth. The filing of copies of schedules with the Commission, including joint tariffs.

Sixth. Prohibiting changing joint rates except on a like notice, and prohibiting the charging of any different sum than is fixed in such joint schedule.

Seventh. The empowering of the Commission to fix rates, and authorizing it to determine whether any practice of the carrier is in violation of the provisions of the act.

Much of the act is merely administrative and has as its object a mere amplification of the former act, although having the force and effect of law.

The matter, however, which I wish to particularly call to your attention at this time is as to the power lodged with the Commission to determine the question of violation of the various provisions contained in the bill as above specified, and more particularly as to the delegation of power to determine the reasonableness of any given rate.

I think we are all reasonably familiar with the general division of the functions of government. We know that there are the legislative, executive, and judicial branches of government. We know also that it is wise that neither of these co-ordinate branches of government should encroach upon the other. This distinction is not the mere creature of constitutional provision, but inherently exists in all civilized government, at least of the higher types, and distinguishes them from what are known as despotic forms of government. If the executive were clothed with the power to determine when a law had been violated, or to construe the law as enacted, there could be no security to the subject other than the will of the executive. If the legislative branch could enact and execute the law, it would be compelled to designate some person to enforce its edicts. And so we find that throughout the entire history of constitutional government the liberty of the citizen, the security of life and property, have only been maintained by the strict observance of these distinctions. Mr. Cooley, upon this subject, says:

"The difference between the departments undoubtedly is that the legislative makes, the executive executes, and the judiciary construes the law, and it is said that that which distinguished a judicial from a legislative act is that the one is a determination of what the existing law is in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provisions."

In other words, "The law is applied by the one and made by the other." Now let us test this proposed legislation by these well known distinctions. It is admitted by the proponents of this measure that the Commission is an administrative body to whom is delegated certain duties in carrying out the will of Congress, and as such is charged with certain legislative duties or functions. In so far as the Commission is administrative it becomes a part of the executive arm of the Government, and as to this can have no legislative authority. But wherein is the Commission administrative? It cannot be said that the power to make certain rules and regulations, as given by this bill, is executive, for the reason that these rules and regulations have the force and effect of law, a violation of which is punished by certain prescribed penalties, and hence are the very essence of legislative prerogative. But these powers are attempted to be conferred by this bill. Not only that; the Commission is empowered to determine whether or no there have been any violations of the substantive provisions of the proposed act, but they may also determine whether or no any of their regulations have been violated. It is not only to make the law, but to determine its violation and construe its terms. If we shall say that the Commission shall required reports to be filed and prescribe the form in which they shall be made, or if we shall invest this Commission with power to fix rates which shall be binding upon the railroads in the future, we have most certainly invested it with legislative functions, and when we, in addition thereto, give it the further right to determine when a violation of these provisions

has occurred, we have invested it with the very highest judicial functions. Now, the question naturally arises, Can this be done?

We have seen that this Commission under the provisions of this bill may—indeed, it is its duty—prescribe certain regulations for the government of the railroads and fix a maximum rate that may be charged and bring before it persons charged, upon complaint of any person injured, with any violation of the law as well as regulations so adopted. No one can seriously question, I think, the proposition that any one charged with the violation of the law has the right to be heard in a properly constituted judicial tribunal, whether he be accused of petty larceny or the violation of the law respecting the conduct of the business of a railroad. In either case he is entitled under the Constitution to due process of law.

MR. TOWNSEND—If the gentleman will permit me, I would not assume to instruct the gentleman at all, but inasmuch as he has asked the question, I would like to ask him, Does not the law provide that the carrier may go into court at any time during the thirty days and have these rights determined to which you have called attention?

MR. HOGG—Yes.

MR. TOWNSEND—That is what the bill provides now, and if he does not pay any attention to it—

MR. HOGG—His rights are precluded.

MR. TOWNSEND—Yes; his rights are precluded.

MR. HOGG—That is the very thing I am objecting to, because, I say, that you cannot preclude any right a man may have to property or person unless and until he has had an opportunity of testing those rights by the due and orderly process of law, and by that we understand a trial before a properly constituted court.

MR. TOWNSEND—Does he not have that?

MR. HOGG—No; he has no trial before any court. The United States Supreme Court has held that this Commission is in no sense a court or judicial tribunal.

MR. GAINES (of West Virginia)—Does the gentleman object to permitting a rate to be made for the future where it has been decided that the existing rate is unreasonable?

MR. HOGG—Decided by whom?

MR. GAINES (of West Virginia)—By the Commission.

MR. HOGG—No; I do not think the Commission has any power to decide the reasonableness of a rate.

MR. GAINES (of West Virginia)—I only wanted to remind the gentleman that it has been repeatedly held that the rate making power is legislative and that courts may not make rates.

MR. HOGG—There is no question about that—

MR. GAINES (of West Virginia)—If we are to lodge rate making power anywhere, it must be in the Commission and not in a court. The Supreme Court of the United States has decided that a court may not do that.

MR. HOGG—There is no question about that at all. I agree with the gentleman entirely. The Supreme Court of the United States has also held that this Commission has no judicial power, and it has also held that the determination of the reasonableness of a rate is a judicial and not a legislative function. Let me read some of the authorities on that question. A case was cited by the gentleman from Texas (Mr. Russell) yesterday, but the latter part of that decision was not read as fully as might be. The first case, I think, that directly passes upon this question is to be found in 134 United States, at page 418. This was the case known as the "Minnesota case." I read:

"This being the construction of the statute by which we are bound in considering the present case, we are of opinion that so construed it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive

ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission, which, in view of the powers conceded to it by the State courts, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

Nothing, it seems to me, could be plainer than that this Commission, which this bill seeks to clothe with such ample and unusual powers, does not constitute a court within this decision. But let me read further:

"The question of the reasonableness of a rate of charge for transportation by railroad company, involving at it does the element of reasonableness, both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination.

Now, I desire to ask these gentlemen, under this decision and the decision that was cited yesterday, what powers they are supposed to have conferred upon this Commission to make their findings as to the reasonableness of a rate determinative of that question, even had they determined it? Even had they concluded that a certain rate was a reasonable rate, it would still be open, it seems to me, to be determined by a court reviewing all the facts in the case as to being reasonable or unreasonable.

In another case cited yesterday by the gentleman from Texas (Mr. Russell), to be found in 167 United States, at page 499, Interstate Commerce Commission vs. Railway Company, the following language is used:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe the rates which shall be charged in the future—that is a legislative act."

MR. GAINES (of Tennessee)—The gentleman says we cannot delegate this rate making power. Will the gentleman say how we can delegate to a railroad corporation the power to make rates?

MR. HOGG—We do not give it to a railroad corporation. They have it by common law and generally by charter.

MR. GAINES (of Tennessee)—But we create the corporation.

MR. HOGG—Oh, yes, yes; but sometimes it happens that the thing created imagines it is greater than the creator, and that is one of the cases, I think.

Many other cases determined by the State courts might be cited, sustaining the view we take, that it does not lie in the power of Congress to give to a merely administrative, or, if you please, a deputy legislative body, judicial powers.

But can we devolve upon this Commission legislative functions? It is agreed, on all hands, that the fixing of a future rate is a legislative act. Indeed, among the numerous decisions upon that subject in the States where these commissions have been established, it seems to be the settled doctrine that all the power that can be exercised by these boards must be based fundamentally upon the theory that they are a branch, or, rather, the agent, of the Legislature, and I think it is pretty well agreed that the Commission may fix future rates. But in no case has the Supreme Court of the United States passed upon the power of Congress to invest a commission with this power. It is true that the language used in the Maximum Rate Case might lead us to infer that they would uphold such a power; but in that case they were only passing upon the question as to whether, in the Elkins Act, Congress had in terms conferred such power, and not upon the broader question of the power of Congress to delegate its function of legislation.

But whatever be the outcome of this whole question, I take it for granted that there is power somewhere to correct the evil that we all admit exists. We are not ready to acknowledge that there are wrongs without a remedy. That

there may not only be violations of positive law, but also violations of those principles of justice and equity which should guide all men. And while we admit the necessity for action, and know that it is our duty to see that the remedy is had, still we must know that if a remedy is provided which in its terms violates any of the well known principles of government—principles which cannot be ignored even under great stress of circumstances, but must be observed so long as constitutional government shall stand—that the remedy applied must be along the lines most agreeable to these safeguards that have been so wisely provided. We seem to be in a great hurry to reach a result all at once in the administration of this doubtful power. The process of the courts is too slow to satisfy many people. We must have summary proceedings. The President has said so, and the people have authorized him, I suppose, to say so. Well, this probably will be done. Out West once in a while they hang a man and try him afterward. You get your results in a hurry, but not always satisfactorily. I know of a case where it is said the hanging was a perfect success, but one of the committee, in explaining the transaction, said that while the proceedings were all that could be desired, there was just one little drawback—they hung the wrong man. And so, now, while everybody is engaged in the whoop and hurrah business, when you can't even get religion without a brass band, and you are lured to heaven with a fiddle, we are supposed to join in with the cry, "Anything to get there." Well, I am in on this deal, and I hope it is a square one, of which we hear so much and see so little. But I am sure that the people are more interested than anyone in the fact that when done it will stay done. I shall vote for this bill, not that I think it is right as to all its provisions, but it is right as to most of them.

I shall vote for it for other reasons. I am sure my people whose agent I am expect such a vote. That is the great and determinative reason.

We are told that no amendments will meet the approval of the committee, and that all parties are agreed upon this, so far as the committee is concerned; if so, it were futile indeed to suggest that there may be some occasion for amendment. With boot and spur and big stick this bill is to be ridden down hill, with but one saving power—that talk may be had, and that is all. Well, that is a privilege that most of the members may be able to save out of the situation. Now, as to the outlook for amendments to the bill. I have no doubt but that the lash will be applied, that the order has been given, and that the order comes from high authority—the committee.

It seems to me that an amendment making express and Pullman companies subject to the act would not have been a bad idea; indeed, I fail to see why they were omitted in legislation so drastic and far reaching.

I had prepared an amendment myself providing for the punishment of those who should ask for or receive preferential rates in the transportation of person or property, but I am well aware that the program will not allow that these matters be considered.

We are told that the common law is the perfection of wisdom, and that when the world was made it was all very good, but in neither case has the stamp of legislative sanction been placed upon the proposition; but now we have, in general evolution of human knowledge, reached a condition where we can say: "It is finished."

But it isn't finished, and we all know that this vexed question will be before Congress in the years to come, as it has been in years passed, and that any advance must be necessarily slow. And I do not believe it is right that those high in authority should lead the people to believe that this act will end the question. Indeed, I do not imagine, from what has been said by some of the advocates of this measure, that any radical changes will be made. If this is so, then you are gold-bricking the people when you lead them to think that the law is self-acting, self-enforcing. We ought to tell the people

that in the very nature of things the operation of the law must be slow; that we can't complain of a fellow tonight and have him hung and quartered before morning.

Mr. Chairman, I do not look for any considerable effect to come from this legislation. The fact that the railroad companies are not here complaining is evidence, to my mind, that they do not greatly fear the operation of the law, even should it be sustained by the courts. Why should we expect any rapid application of this law? Your tribunal cannot divide itself up that it may the more readily hear complaints. It must act as an entire body upon these matters, and even if it had nothing else in the world to do but fix rates it could not possibly adjudicate one-tenth of the cases that would be brought before it. Why, it has been determined that in fixing a reasonable rate more than fifty elements enter into it and must be considered; and when you add to that the additional subject of determination that all rates must be remunerative to the carrier, you have practically made it impossible to deal with the question in anything like an intelligent way.

There is one question that I want to ask the people of the West as well as of New England, and that is this: Granting that the Commission is clothed with power to determine when there have been discriminations by the railroads either as to persons or places, and there is complaint made by a number of places, say, in the State of Ohio, that the roads are giving a preferential rate on certain products, say, from Colorado, whereby the Colorado product is delivered in the market east in competition with the Ohio product, what will the Commission do? Of course, no one knows what it will do, but anyone can see what it may do. Should the Commission decide that the place having the natural advantage of location should be entitled to protection in rates from places without this advantage, there is at once presented the whole field of speculation, of guess, of doubt, and maybe disaster. We are all agreed that the cause of the wonderful development of the entire country has been the facilities with which the product of one part has been marketed in another part of the country. If this had not been, the wonderful development of the West could not have been possible, and so through the desire of railroads for gain they have developed a traffic profitable to them and profitable to the people whom they serve.

I do not like government at the discretion of anybody. I would not be willing even to take the discretion of our President in all things, however honest, courageous and just he may be and is. I prefer positive law—a law so plain that all may understand its provisions, its requirements and its penalties; a law that reaches all men alike and punishes all men alike; but when you give it to a set of men—I do not care how fair they may be—to say not what the law is, but what it will be, you have gone a long way along the road that in the end will mean a revolution in the very foundation principles of a representative government. I prefer to keep the powers of government as they have been distributed in the fundamental law of the land and as the wisdom of the fathers left it. For this reason I have introduced the bill known as H. R. 10,098, believing that in its provisions we departed the least from those well-founded distinctions of the powers of the several branches of government and preserve to the people the right guaranteed to them that they should not be divested of their property without due process of the law. The bill was drawn along the lines suggested by Judge Grosscup, of Chicago, and to one who will deliberately consider it in connection with the many decisions of the courts, and not under the pressure of present demands, I believe it will meet to the largest degree the demands of the times with the least possible infraction of well-known legal distinctions. It is a measure that has been approved by shippers of the United States from every State and Territory, representing in the aggregate more than five thousand millions of business annually. In providing for a court of transportation it but follows the terms of a bill introduced by the chairman of the Inter-

state Commerce Commission last session, and in its provisions I think will be found to give a more speedy remedy in the end than the bill we are expected to support.

I do not wish to be understood that the bill introduced by myself was perfected by me, or even to any considerable extent my effort. I can say only that its provisions in almost every detail meet my hearty approval. I think its provisions are ample, under the broad powers of the court, indeed powers, that the bill we shall pass can in no wise take away or abridge, to give every remedy for the wrongs complained of, and, in the end, will be found more satisfactory to the people.

In this great rush of doing things and considering them afterward, I take it, there is great danger to the people. Of course, those who believe in personal government—the will of the ruler being the supreme law; those who are revolutionary in their ideas and tendencies—will favor any law that reaches its object at once; but, after all, I think we will agree that it is better to tread along the old beaten pathway, the one along which the progress, achievements and history of the Republic have been accomplished, and along which alone I firmly believe the destiny of the nation can be realized. It is along these lines that my bill has been framed; for the purpose of preserving to the utmost the right of the individual to the protection which the law of the land guarantees, and that when a violation of law is alleged that question shall be determined between the people and the railroads, just as the issues between the people and an alleged horse thief are determined. We will not presume anyone guilty, either high or low, until they have had that question determined by a court of competent jurisdiction.

Nor will we be content to have the grand jury try the case. We will agree that they may due presentment make, but they shall not try the case.

I do not believe that the people nor the courts will stand for the power sought to be conferred upon this Commission to make a regulation on violation of which a court may be asked to stop the transportation of any commodity over a line of road, and thus punish the communities as well as the companies; nor do I think, for one moment, that the courts can be induced to grant so unusual a remedy.

Imagine, if you please, the vast amount of traffic passing over any one of these great interstate lines of road, reaching hundreds of thousands of people dependent, in large measure, upon the service of the road, and then measure, if you can, the effect that a decree of a court would have in injoining all traffic because of some violation of this act or a regulation of the Commission.

In the bill H. R. 10,098 a judicial tribunal is provided where all these matters may be tried. Its judges are appointed for life, and hence not subject to varying political conditions. The judges may sit in different parts of the country at the same time, and thus facilitate the hearing of complaints, and upon appeal from any one judge the full court may hear and determine the matter. The reasonableness of a rate or practice can thus be determined in court and the equity powers given to courts be invoked to enforce its decrees. Along some such line ultimately must this whole subject, in my judgment, be determined.

I take it that this bill, introduced by myself at this session of Congress, will secure the hearty approval of the chairman of the Committee on Interstate Commerce, because I find that at the last session of Congress he introduced a bill almost identical in its provisions with mine, giving the courts the power to determine this question, and hence, when he reports this bill back, I shall expect the gentleman from Iowa to give me his most hearty support to the bill which I have introduced. Gentlemen, I thank you.

Mr. Esch, of Wisconsin, said:

There is need of regulating express companies. While held to be common carriers, they have escaped the restrictions which are imposed upon such carriers. Starting as forward-

ers of small and valuable packages, their business has grown to enormous proportions, until today it covers items of traffic from coins to live stock. Most of what they carry is freight, and what they carry deprives the railroads of an equal amount.

* * *

To my mind, the crux of this legislation is contained in Section 4, which amends Section 15 of the original act by giving to the Commission the power "to determine and prescribe what will, in its judgment, be the just and reasonable and fairly remunerative rate or rates, charge or charges, to be thereafter observed as the maximum to be charged" in any given case where complaint has been made and a hearing had. It is this grant of power around which the contention with reference to rate regulation has raged for the last year. Those favoring the proposition do so because of their conviction that the time has come when the Government must assert the power given it under the Constitution to provide the necessary safeguards against railroad combinations. Those who oppose it do so in the belief that it will establish a dangerous precedent, that it is contrary to our economic conditions, will lead to abuse, and as a result will affect disastrously the railroad interests of the United States. I am not at all persuaded that any such result will follow. It has not followed in any of the twenty-four States which have adopted more or less rigid laws for the regulation of railroads within their respective borders. In my own State a rate law was enacted a year ago more drastic and far reaching than has yet been enacted by any State save possibly Texas. Since this law went into effect no injurious results have followed—railroad business is as prosperous now as ever—nor has the law lessened the wages of railroad employees.

Mr. Grosvenor, of Ohio, said:

I consider the agitation that has emanated from Congress and has spread itself out over the country as uncalled for and injurious. There never was an issue so feigned and so much a "fake" issue as the issue of an agitation to be called rate agitation. There was no such condition until it was manufactured here. There is no such condition excepting only as it has been planted, nursed, promoted, and propagated from the halls of political debate, and the agitation of a few gentlemen in the country is giving it notoriety by the action which they have taken. I live in a great shipping district. I venture to say there is more interstate commerce freight shipped out of the district that I have the honor to represent than there is out of one-third each of all the States of this Union. And yet, coming up to this moment, not one letter, not one newspaper editorial, not one suggestion has come to me in regard to this subject, and I venture to say that of the 386 members of this House 300 of them will testify the same way. That the public have been aroused by the organized cry of outrage against the railroads there is no doubt, and the people have been brought to believe that they have been most seriously imposed upon; but on a close analysis they will discover that it has not been the rates charged, but the manner in which the discriminations have been made that has done the injury to them.

But this bill is born of the dawn of a political millennium in this House. All the angels that sang together here on the day this bill was reported sang the same tune. Men who have stood here and denounced the Elkins bill as totally valueless and denounced the interstate commerce act as faulty come here now and say that while they cannot point out that this bill has made any change in the law yet they are all for it. Then, Mr. Chairman, there is a most notable proposition here. While it is true that these eighteen gentlemen, or seventeen, or whatever there may be of them—the very ablest men in this House, I grant that—while it is true that no two of them think alike about the details of this bill, they stand together as a close corporation and say, "We have pledged ourselves that there shall not be any amendment put on this bill." A half a

dozen of those gentlemen have told me, "Yes; that is the thing." One of them told me today—and he would not object if I named him, I think—"Well, if you fellows get at it, you will destroy it."

Mr. Hepburn, of Iowa, said:

This is a great question. Any proposition of law that involves an interest so great as the railway interests of the United States ought to be regarded with solicitude by those who are charged with responsibility in that behalf.

One-twelfth of all the wealth in the United States is involved in greater or less degree in this bill. The earnings of the railways are so colossal that two billions and one hundred millions mark the amount of this great interest in one year. Our whole wealth production is but ten times more than that. Think how colossal this is. But the aggregate of investments, the aggregate of annual earnings, does not mark fairly the importance of this subject to the American people. Think how dependent we are for our prosperity, for the comforts of life even, upon the common carriers of the land. Think of the infinitude of the transactions between the carriers and those they serve—millions and millions of transactions.

* * *

I could not define the word "reasonable" in a way satisfactory to myself. I doubt whether any gentleman could do that, but he could, in a series of cases, exercising his best discretion, looking at all the facts that may be brought to bear upon a given case, arrive at a conclusion that will be in harmony with the demands of justice and will be right in all of its bearings upon all of the parties. It is a very difficult thing, a very difficult thing, to use words of our English language that are not susceptible of varying interpretations. My friend on my right, the gentleman from Ohio (Mr. Grosvenor), was exercised the other day because there was not sufficient definiteness in the language used. I do not know that I see before me one individual whom I believe can write an English sentence of twenty words that I cannot give more than one meaning to. It is an exceedingly difficult thing to use the English language in such way that ingenious carping cannot find fault with it. My friend here undoubtedly has heard the story of the little girl who at her prayers in the morning said: "Good by, God; we are going to move to Missouri." Her wicked brother, who happened to overhear her, and who was jubilant at the idea of the journey, used the very same sentence, but he said: "Good! By God, we are going to move to Missouri!"

MR. HOGG—Mr. Chairman, will the gentleman permit an interruption?

THE CHAIRMAN—Does the gentleman yield?

MR. HEPBURN—Certainly.

MR. HOGG—Is it the understanding of the committee that this Commission is a judicial tribunal?

MR. HEPBURN—Well, I know the gentleman from Colorado to be a profound lawyer—constitutional, statutory, common law and otherwise—and I shall remand that inquiry to him.

MR. HOGG—Let me ask the gentleman another question.

MR. HEPBURN—Oh, Mr. Chairman, I do not care to answer questions of that kind.

Amendments offered to the Hepburn bill were numerous, but none was adopted. The purpose of the chief amendments was to include under the provisions of the act, express and sleeping car companies and postal cars. There were also several amendments looking to review of the decisions of the commission by the courts. The bill was passed exactly as it came from the committee.

Several other speeches were made, but up to the time of the preparation of this article they had not appeared in the Record.

Side Lights on the Situation in Washington

THE situation at Washington has reached a period of speculation concerning how certain Senators will vote upon the Hepburn bill. Friends and enemies—for it has both—are taking lists of the Senators and making a tally concerning the probable vote of the members. The bill came over from the House without amendment and with an overwhelming vote behind it. It is doubtless true that to the Senators, this measure of votes at first, meant a great deal. There was consternation in the ranks of those opposed to the measure, and it is certain that had the measure been presented to the Senate for its determination on the afternoon of February 8, the day on which it passed the House, it would have received an overwhelming vote in the upper body. In a day or so, however, particularly after the speech of Senator Lodge, the "reviewists" and those who are opposed to any governmental regulation or supervision took faith and started to work with renewed energy.

Close Vote in the Senate

The situation in the Senate is a close and narrow one, and whatever amendment may be proposed will, according to well informed persons, be decided by the narrow vote of one or two members. The most important amendment to be voted upon is whether or not there shall be incorporated in the bill the right of a court to review the decision of the Interstate Commerce Commission, and, if so, whether or not this review shall take place prior or subsequent to the operation of the order issued by the Commission. It has been urged in behalf of the first that between the lines of every statute there rests a right to appeal. Those opposed to this view say with great force, that, while there is perhaps a right to review every statute by implication, yet that jurisdiction ought be given to some court to hear the appeal. On the second of the more important amendments, it is urged upon constitutional grounds that the carrier must have his day in court before any change, particularly in a rate, can take effect.

It is likely that the Senate will be as divided as the committee. Those who have openly expressed themselves upon the subject, either in favor of or against the measure, are not numerous, and the polls which have been made are more guess work than actual knowledge. Each poll has about one-third of the Senate in favor of the measure, without amend-

ment; one-third in favor of the measure with amendment providing for judicial review of the Commission's order. The remainder of the Senate is uncertain and largely of the Allison type, or non-committal. The report having been made, the Senate gave the matter immediate, but careful consideration, and proceeded to thresh out all of the questions involved upon the floor.

Attitude of the President

The attitude of the President, so far as is publicly known, is that of saying nothing. He receives visits at various times from advocates of regulation and from those who are opposed to legislation of this character. The position of the Executive seems to be best indicated by the word, hesitating—or at least uncertain.

It has been found that the Hepburn bill will not produce the transportation millennium. It probably does not include express companies and sleeping car companies; it does not permit the Commission to change a classification; it does not do a great many things which individual members of the Legislature desire to have done. It has been found out that if the shipper fails to prove his case before the Commission, he is without remedy. One of the prominent daily newspapers has been urging this as a reason for an amendment to the bill. It is strange that that this knowledge should have just come to light; for, the shipper who failed to prove his case never had a further remedy than to sit still and grin and bear it. Right or wrong, the decision of the Commission is as to the shipper controlling. The act has always lacked mutuality. The carrier, if he lost, could take steps for self protection, but the shipper was at the end of his rope if he failed to prove his case to the satisfaction of the Commission.

We can look forward to a thorough consideration in the Senate of the transportation needs of the country, the constitutional questions involved and their solution. The narrow margin by which the bill was reported by the committee, without recommendation or amendment augurs for this. The scene of action has simply been transferred from the committee room to the floor of the Senate. Here the solons will give their views on the necessity for legislation, their opinions on Constitutional law and show their knowledge of language.

The Speaker Held His Peace

An amusing incident recently happened in the Ohio Legislature, which is particularly antagonistic to lobbyists. Speaker Thompson was in the chair when the daughters of Governor Pattison arrived at the Capitol. The young women, with some girl friends anxious to see the workings of the Legislature, were admitted to the floor of the House by the secretary to the Governor, and several members gallantly gave their seats to the visitors.

In the meantime certain alleged lobbyists slipped into the chamber and the Speaker's attention was called to the fact by the receipt of a note from one of the members. He could not instruct the sergeant-at-arms to clear the House nor could he order the lobbyists to get out without bringing the attention of the whole House to the girls, thus causing them unnecessary embarrassment, so he held his peace until the House adjourned.

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AMERICAN SHIPS FOR AMERICAN TRADE

Reasons for the Pending Bill Which Provides for Improved Shipping Facilities to Latin America Africa, Australasia and the Orient, With Europe Omitted

BY JACOB H. GALLINGER

Chairman of the Merchant Marine Commission.

On February 14 the Senate passed the Ship Subsidy bill by a vote of 38 to 27. Senators Burkett, of Nebraska; Dolliver, of Iowa; La Follette and Spooner, of Wisconsin, and Warner, of Missouri, Republicans, voted with the Democrats against it.

As passed the bill establishes thirteen new contract mail lines, and increases the subvention to the oceanic line running from the Pacific Coast to Australasia. Of the new lines, three leave Atlantic coast ports, one running to Brazil, one to Uruguay and Argentina, and one to South Africa; six from ports on the Gulf of Mexico, embracing one to Brazil, one to Cuba, one to Mexico and three to Central America and the Isthmus of Panama; four from Pacific Coast ports, embracing two to Japan, China and the Philippines direct, one to Japan, China and the Philippines via Hawaii, and one to Mexico, Central America and the Isthmus of Panama.

The bill also grants a subvention at the rate of \$5 per gross ton per year to cargo vessels engaged in the foreign trade of the United States, and at the rate of \$6.50 per ton to vessels engaged in the Philippine trade, the Philippine coastwise law being postponed until 1909.

Another feature of the bill is that creating a naval reserve force of 10,000 officers and men, who are to receive retainers after the British practice. Vessels receiving subsidies are required to carry a certain proportion of naval reserve men among their crews.

The aggregate compensation for mail lines is about \$3,000,000 annually. No steam vessel of less than 1,000 tons is to receive aid.

Senator Gallinger strengthened the measure against the danger pointed out by Senator Allison in the matter of tramp steamers engaging for a year in voyages from port to port in foreign lands and then coming home to draw subsidy. His amendment provided that no vessel should receive pay for a voyage from one port in the United States to another port in the United States, that a vessel engaged exclusively in carrying between foreign ports and vessels sailing only to foreign ports less than 150 miles from their last port in the United States should be barred from receiving subsidy.

The bill has been sent to the House.

PRESIDENT ROOSEVELT has led the way in the movement which has produced the important legislation now pending in Congress for the revival of the American merchant marine in overseas commerce.

In his message to Congress on December 7, 1903, the President declared:

"A majority of our people desire that steps be taken in the interests of American shipping, so that we may once more resume our former position in the ocean carrying trade. But hitherto differences of opinion as to the proper method of reaching this end have been so wide that it has proved impossible to secure the adoption of any particular scheme." In view of these facts, President Roosevelt recommended the creation by Congress of a Commission "for the purpose of investigating and reporting to the Congress at its next session what legislation is desirable or necessary for the development of the American merchant marine and American commerce, and incidentally of a national ocean mail service of auxiliary naval cruisers and naval reserves."

"Moreover, lines of cargo ships are of even more importance than fast mail lines, save so far as the latter can be depended upon to furnish swift auxiliary cruisers in time of war. The establishment of new lines of cargo ships to South America, to Asia and elsewhere would be much in the interest of our commercial expansion."

The Commission and Its Work

Congress authorized the establishment of a Commission of five Senators and five Representatives,

chosen by the President of the Senate and the Speaker of the House, as follows:

SENATE.

Hon. Jacob H. Gallinger, N. H., chairman.
Hon. Henry Cabot Lodge, Mass.
Hon. Boies Penrose, Pa.
Hon. Thomas S. Martin, Va.
Hon. Stephen R. Mallory, Fla.

HOUSE.

Hon. Charles H. Grosvenor, Ohio.
Hon. Edward S. Minor, Wis.
Hon. William E. Humphrey, Wash.
Hon. Thomas Spight, Miss.
Hon. Allan L. McDermott, N. J.

Between May 23 and December 12, 1904, this Commission gave a series of public hearings in the chief ports of the Atlantic and Pacific States, the Great Lakes and the Gulf of Mexico, and finally in the city of Washington. Three or four hundred witnesses were heard—not only ship owners and ship builders, but merchants and manufacturers interested in the export trade, bankers, farmers, editors and lawyers—the testimony making up three volumes of nearly 2,000 printed pages. Early in January, 1905, the report and recommendations of the Commission were duly presented to Congress, and the bill embodying these recommendations was promptly and favorably reported from the proper committees to both the Senate and the House of Representatives. This was the short ses-

sion, and, lacking time for consideration and action on the bill, Congress before adjournment instructed the Merchant Marine Commission to continue its inquiry and present its final report to the new Congress, which opened in December last. On December 6, 1905, this final report was duly presented in both Senate and House, and a bill was favorably reported from the Committee on Commerce and brought up for consideration in the Senate. President Roosevelt thus refers to the merchant shipping question in his message to Congress December 5, 1905:

"To the spread of our trade in peace and the defense of our flag in war a great and prosperous merchant marine is indispensable. We should have ships of our own and seamen of our own to convey our goods to neutral markets, and in case of need to reinforce our battle line. It cannot but be a source of regret and uneasiness to us that the lines of communication with our sister republics of South America should be chiefly under foreign control. It is not a good thing that American merchants and manufacturers should have to send their goods and letters to South America via Europe if they wish security and dispatch. Even on the Pacific, where our ships have held their own better than on the Atlantic, our merchant flag is now threatened through the liberal aid bestowed by other governments on their own steam lines. I ask your earnest consideration of the report with which the Merchant Marine Commission has followed its long and careful inquiry."

Terms of the Pending Bill

This bill of the Merchant Marine Commission is very different from any measure which has hitherto received the attention of the national lawmakers. It follows literally the suggestion of the President that "the establishment of new lines of cargo ships to South America, to Asia and elsewhere would be much in the interest of our commercial expansion." It is, in practical effect, a bill for improved shipping facilities to Latin America, Africa, Australasia and the Orient, while Europe is omitted from its calculations.

The reason for this is manifest. The European nations, as a rule, are ship owning nations. They are also manufacturing nations. They require immense quantities of food stuffs and crude materials from America. They send their ships over for this merchandise, and these ships afford adequate facilities for our import trade from Europe. In regularity and efficiency of service and in low average rates of freight the steamship traffic between Europe and the Atlantic and Gulf coasts of the United States leaves comparatively little to be desired, albeit more than 95 per cent. of this transatlantic commerce is conducted by foreign ships run under foreign flags and controlled primarily in foreign interests. Of course, it would be desirable to have great American steamship lines on the South Atlantic, but, with the heavy subsidies that foreign nations are paying to their established lines, there is little hope of successful American competition in the near future.

South American Trade

But there is a wide contrast between our shipping

facilities to Europe and our shipping facilities to the other continents. The nations of South America, the various countries of Africa, and the nations of Asia, with the one important exception of Japan, are not ship owning nations. Not having their own ships, they cannot come to our ports for the merchandise they need, and we have few or no ships to deliver the goods which they may desire to purchase from us.

The natural and inevitable result is that our trade and their trade are both seriously handicapped by sheer lack of the regular and efficient transportation facilities requisite for the demands of modern commerce. The ship owning nations of Europe will not furnish adequate facilities. They are willing to allow their surplus tonnage, when they have any—and this is generally their worst tonnage—to engage more or less spasmodically in our trade with South America or the Orient. But they take good care to keep their best and most economical vessels in their own service, and to turn over as a rule their oldest and slowest and least economical craft to do the carrying for the Americans.

The Ocean Mail Lines

The Merchant Marine Commission has gone at this problem in a straightforward way. Realizing that close heed must be paid to the national revenues, the commission does not propose to bestow a single dollar of national aid upon a fast passenger line to Europe, leaving that for future legislation if it shall be deemed desirable, but concentrates all the energy of the bill upon developing entirely new commercial lines to Latin America, South America, Australasia, Japan, China and the Philippines.

These proposed new ocean mail lines are as follows:

First—From a port of the Atlantic coast of the United States to Brazil, on steamships of the United States of not less than 14 knots speed, for a monthly service, at a maximum compensation not exceeding \$150,000 a year, or for a fortnightly service at a maximum compensation not exceeding \$300,000 a year.

Second—From a port of the Atlantic coast of the United States to Uruguay and Argentina, on steamships of the United States of not less than 14 knots speed, for a monthly service, at a maximum compensation not exceeding \$187,500 dollars a year, or for a fortnightly service, at a maximum compensation not exceeding \$375,000 a year.

Third—From a port of the Atlantic coast of the United States to South Africa, on steamships of the United States of not less than 12 knots speed, for a monthly service, at a maximum compensation not exceeding \$187,500 a year, or for a fortnightly service at a maximum compensation not exceeding \$375,000 a year.

Fourth—From a port of the United States on the Gulf of Mexico to Brazil, on steamships of the United States of not less than 12 knots speed, for a monthly service at a maximum compensation not exceeding \$137,500 a year, or for a fortnightly service at a maximum compensation not exceeding \$275,000 a year.

Fifth—From a port of the United States on the Gulf of Mexico to Cuba, on steamships of the United States of not less than 14 knots speed, for a semi-

weekly service at a maximum compensation not exceeding \$75,000 a year.

Sixth—From a port of the United States on the Gulf of Mexico to Central America and the Isthmus of Panama, on steamships of the United States of not less than 12 knots speed, for a weekly service at a maximum compensation not exceeding \$75,000 a year.

Seventh—From a port of the United States on the Gulf of Mexico to Mexico, on steamships of the United States of not less than 12 knots speed, for a weekly service at a maximum compensation not exceeding \$50,000 a year.

Eighth—From a port of the Pacific coast of the United States, via Hawaii, to Japan, China and the Philippines, on steamships of the United States of not less than 16 knots speed, for a monthly service at a maximum compensation not exceeding \$300,000 a year, or for a fortnightly service at a maximum compensation not exceeding \$600,000 a year.

Ninth—From a port of the Pacific coast of the United States to Japan, China and the Philippines, on steamships of the United States of not less than 13 knots speed, for a monthly service at a maximum compensation not exceeding \$210,000 a year, or for a fortnightly service at a maximum compensation not exceeding \$420,000 a year.

Tenth—From a port of the Pacific coast of the United States, via Hawaii and the Samoan Islands, to Australia, on steamships of the United States of not less than 16 knots speed, for a service once in three weeks at a maximum compensation not exceeding \$217,000 a year in addition to the compensation now provided pursuant to contract under the act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce."

Eleventh—From a port of the Pacific coast of the United States to Mexico, Central America and the Isthmus of Panama, on steamships of the United States of not less than 12 knots speed, for a fortnightly service at a maximum compensation not exceeding \$120,000 a year; provided that the requirements of this section as to the rates of speed shall be deemed to be complied with if said rates are developed during a trial of four hours' continuous steaming at sea in ordinary weather in water of sufficient depth to make the test a fair and just one, and if the vessels are maintained in a condition to develop such speed at any time while at sea in ordinary weather. This trial shall be made under the direction and supervision of a board of naval officers, which the Secretary of the Navy shall appoint upon the application of the owner or owners of the vessel to be tested.

Our Flag in Danger

Of these eleven lines, only that to Australasia is an existing mail line under contract with the Government. All of the seven lines in the Atlantic and the Gulf of Mexico are absolutely new—for not one American steamer is now running regularly on any of the routes suggested. A few American steamers are now running on the Pacific routes, but in no case is the service profitable and self-sustaining, and the American people may be very sure that those few ships will not continue to run unless adequate national aid is speedily forthcoming.

There are, for example, four or five American steamers of the Pacific Mail Company running in con-

nection with foreign steamers from San Francisco to Japan, China and occasionally the Philippines. But this is by no means the full service contemplated in the proposed bill. New ships would have to be constructed for this service if it is to run fortnightly to Manila, and the Asiatic crews of the existing ships would have to be displaced in whole or in part by white men, half of whom must be American citizens.

These four or five American steamers, including the fastest ships in the Transpacific service, are paid for carrying the bulk of our Oriental mails from \$60,000 to \$80,000 a year. Three smaller Japanese steamers paralleling the Transpacific route of the Pacific Mail, are given a subsidy of between \$500,000 and \$600,000 a year by their Government.

Sought by the Japanese

The result is, of course, that the American ships can earn and pay no dividends. This fact is perfectly well known in Japan, and the great Japanese steamship company, the Toyo Kisen Kaisha, has offered to purchase these great vessels, haul down the American flag and hoist its own flag, and operate these ships in Japanese trade, for Japanese interests, with a subsidy already assured.

A similar option, it is understood, has been sought by the Japanese on the American ocean mail line from San Francisco to Samoa, Auckland and Sydney, and the Oceanic Steamship Company telegraphs significantly:

"Will not sell Oceanic steamships so long as have reasonable hope of keeping them under American flag. Fate of shipping bill will decide ours."

In view of this emphatic warning, the bill before Congress proposes to add \$217,000 a year to the present mail compensation of the Oceanic Company, making \$500,000 in all. This is the only instance in which there is an increase in the mail subvention of an existing line under contract with the Government. This American line to Australasia performs the swiftest service in the South Pacific, and receives a compensation much lower than that of competing European lines, which are under much less rigorous requirements. It would not be a pleasant thing to see the fine Oceanic steamers—designed and built as "merchant cruisers" of the United States—taken over to the Japanese flag, and diverted from San Francisco to run between Yokohama and Australia. A Congress which permitted this to be done would be liable to hear in a very emphatic way from the American people.

The Puget Sound Line

So, too, with the few steamers now running from Puget Sound to Japan, China and the Philippines. They receive a few thousand dollars in mail pay, and compete directly with a Japanese line of three steamers enjoying a subsidy of \$330,000 a year, and a British (Canadian Pacific) line with a subsidy of \$300,000. It is not strange that Mr. James J. Hill has declared that under present conditions he would never build another steamship in America, and that President

Winsor, of the Boston Steamship Company, has given fair notice that unless some relief is forthcoming he must lower his flag and quit the route. Failure or long postponement of the present bill would unquestionably mean the disappearance of the American flag from the Pacific almost as completely as it has vanished from the North Atlantic. The pending legislation would not only require these American companies to maintain, but would enable them to greatly increase, their tonnage.

Aid for "Tramp" Cargo Vessels

Subventions to ocean mail lines are not, however, the only form of encouragement contained in the shipping bill. The useful, hardworking ocean "tramps," or cargo vessels, steam and sail, are not forgotten. A general subvention at the rate of \$5 per gross ton per year—\$6.50 in our Philippine trade—is offered to all American owners of cargo craft in foreign commerce who are willing to hold their vessels at the disposal of the Government in time of war, to keep them seaworthy and efficient, to carry the mails free of charge, to make all ordinary repairs in the United States, to employ a certain proportion of Americans in their crews and a certain increasing proportion of naval reserve men, who must all be American citizens. This is also required of the mail liners.

There can be no favoritism in such a proposition as this. It is open on fair and equal terms to all American ship owners, with the proviso, however, that no given ship shall receive this subvention for a longer period than ten years. The United States, producing and exporting lumber, cotton, grain and provisions, stands in imperative need of a large fleet of vessels adapted to the transportation of these bulky commodities. Moreover, ocean mail lines are not complete without a considerable auxiliary tonnage of cargo craft of this description.

Great Britain and Germany give no subsidies to "tramp" steamers, but bestow their aid from the national treasury exclusively on great mail lines. Of course, in both countries the "tramp" steamers are indirectly benefited by this policy, which stimulates ship building and creates trade routes, where rough cargo craft become indispensable for the carrying of certain cheap commodities. But the mere fact that the British and German governments subsidize vessels of a class that may perhaps be termed the aristocracy of the sea instead of the hardworking democracy is in itself no conclusive reason why this policy should be imitated by America. In developing our merchant shipping we must heed the peculiar demands of our own export trade, and this export trade requires not only regular mail lines, but "tramp" vessels running hither and thither wherever there is a market for American goods or a cargo of essential materials for American industry.

"Delivery Wagon" Ships

One frequent criticism of previous shipping bills has been that they did not lay sufficient emphasis on

the "delivery wagon" vessel. There can be no such complaint of the present measure, for after a few years the larger part of the subventions payable under it will go, not to mail lines, but to cargo craft in general commerce. The rate of subvention proposed—\$5 per gross ton per year, or \$6.50 in the Philippine trade—will not build floating palaces. It will not encourage the construction of the swift and expensive steamers required for the passenger trade to Europe. Such vessels cost from \$150 to \$200 per ton. But cargo ships can be built for \$50 or \$75 per ton, and the subventions of this bill offer adequate inducement for the building and operation of this useful class of floating property. This subvention implies the closest thrift and vigilance upon the part of ship owners. It equalizes conditions with foreign ships, but does little or nothing more. It leaves a great deal to the energy and enterprise of American ship owners. No man can depend upon the subvention alone to make his business successful. It is not a bonus. It is not a gift outright. It has got to be earned by alertness and industry.

Adequate and Effective

But the great majority of practical American ship owners operating cargo vessels, part in the coastwise trade and part in the foreign trade, express the opinion that with economy and enterprise they can build and run ships, with the aid of this cargo subvention, in the trade to the West Indies, South America and the Orient. Ships built for this traffic will be available, in case of an emergency, to convey our export merchandise to Europe. But the transatlantic trade is now fairly well taken care of by the foreign steamship companies, and is not likely to be interrupted by anything save a serious foreign war. It is well to remember, however, that even the little Boer war a few years ago caused Great Britain to withdraw a million tons of steamships for her transport service, brought a sharp advance in freight rates, and cut off at a single stroke millions of dollars of our export commerce—the loss falling directly upon the farmers of the West and the cotton planters of the South. A respectable merchant marine in foreign trade, from which spare tonnage could be swiftly drawn, would have saved the United States from this disaster.

There is nothing especially abstruse about this question of American shipping in the general ocean trade. It is governed by the same principles which rule our splendid system of internal transportation. There was a time when stage coaches, wagons and flatboats sufficed for the domestic traffic of our country. There were then those who urged that these facilities were adequate—just as there are now foreign steamship owners and their friends and allies who insist that crazy, old, pot-metal craft, discarded from European services, are adequate to convey the commerce of the United States with its sister republics of South America.

We have adequate facilities of transportation by rail to Canada, and by rail and sea to Mexico—and

Canada and Mexico buy more goods from the United States than from any other nation. In both of these American countries, our near and great neighbors, the United States holds a paramount position, which it should hold in every country of this Western Hemisphere.

Transportation the Main Factor

It is essentially a matter of transportation facilities. There are, of course, some other influences that are needful, like an improved consular service, banking facilities, etc. But transportation is, after all, the main factor in the situation. It is no mere coincidence that the two South American countries to which the United States sells more merchandise than any European nation are the two countries directly connected by American lines of steamships with the ports of the United States. These two countries are Colombia and Venezuela. While we lag far behind England and Germany in Argentina, Chile and Brazil, we sell to Venezuela nearly twice as much merchandise as either Germany or Great Britain. And we sell to Colombia—an American steam line runs in the Atlantic and another in the Pacific to the Isthmus of Panama—more than twice as much as Great Britain sells and five times as much as Germany. There can be no doubt that with adequate American shipping facilities to Brazil, Argentina and the other large countries of South America, we shall eventually surpass Europe and dominate those markets, as we now dominate the markets of Cuba, Mexico, Venezuela and Colombia.

Cost of Our Lack of Ships

As it is, lacking American ships, we are now selling to Brazil 30 per cent. less of American flour, provisions and cotton goods and machinery than we sold a dozen years ago, while out of a total foreign commerce of upward of \$400,000,000 in Argentina, our share is the petty one of only about \$25,000,000. Not only is Argentine flour driving the flour of our Northwest out of Brazilian ports, but flour from Austria-Hungary is doing the same thing. And the chief reason for it is to be found in the fact declared by the *Brazilian Review* that the freight rates on flour by subsidized Austrian lines to Brazil are much lower than the rates by the ships of the foreign "combine" from New York to Pernambuco, Rio and Santos.

Our export trade to South Africa has fallen off heavily in recent years. At the same time, Canadian exports to Cape Town and Natal have increased from \$26,815 in 1901 to \$2,228,000. The chief reason for this is the establishment of a direct Canadian subsidized steamship line. Our Consul-General at Cape Town states that, while freight rates by the steamships of the European "combine" from New York to Cape Town are \$6.70 per ton, and to East London and Durban \$7.91, the rates by the subsidized Canadian ships from Montreal are \$4.26 and \$4.87, thus giving a great advantage to Canadian manufacturers, farmers and lumbermen as compared with their American competitors.

It is not enough to produce goods at a favorable

price. You must have at least as good transportation facilities and as favorable rates as your rival has, or you will get no business. A great deal is being said of the evil effects of discriminations in the railroad traffic of the United States. How about discriminations by foreign ship owners against American producers in the markets of the world?

Driven Abroad

Of recent years there has been a marked tendency on the part of American manufacturers, who have developed an export trade, to establish factories in Canada or in Great Britain and Germany. It is far more than lower wages and expenses that have drawn them thither. Following the example of the Standard Varnish Company, a great firm of paint manufacturers, A. A. Eberson & Co., of St. Louis, recently established a manufacturing plant in London. The head of the firm returned to this country and was asked why he had thus invested American capital abroad. Mr. Eberson gave this significant answer:

"Under existing conditions as to shipping possibilities in the United States, I believe there is more money for us to manufacture for export to England than here. You can go to any wharf in London and see English ships bringing freight from all ports of the world, and you can send your goods out from English ports in those same ships. You manufacture in the United States and look for American ships to take your goods, and you do not find them. If you want to freight by ships you must turn to foreigners. That's something for the opponents of the American Ship Subsidy Bill to think about. It's a fact that has determined more than one American manufacturer to establish plants in England, for we are not the only ones who are going over there."

These are facts of profound concern to the Government and to the people of the United States. We have the best system of inland and coastwise transportation in the world. But, of all the great commercial nations, we have the worst system of ocean transportation, because, while protecting and encouraging everything else, even to the point of lavishness, we have almost altogether neglected this important interest. It is estimated that the subventions proposed by the Merchant Marine Commission will cost about \$4,500,000 a year for ten years. That money will have to come out of the Treasury. But it will give us a great merchant marine. It will give us transportation facilities to the markets of South America, Africa, Asia and Australasia, and eventually transportation facilities of our own to Europe. It will make it unnecessary for American manufacturers to go abroad to find facilities for their export trade. It will cost \$4,500,000 a year—but it will bring a commerce a hundredfold more than that to the manufacturers, farmers and merchants of America.

Names for New Lake Steamers

Names have been selected for the 600 foot steamers now being built at South Chicago for the Pittsburgh Steamship Company, to be ready in 1906. They will be called J. Pierpont Morgan, Henry H. Rogers, Norman B. Ream and Peter A. B. Widener.

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WHILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

THE passage of the Hepburn bill in the House by a vote of 346 yeas and 7 nays does not have the significance which the mere numbers might attach to it. Had the vote been taken when the bill was reported from the committee it is likely that the vote would not have been materially different. The so-called debate upon the subject made neither friends nor enemies for the measure. Since the passage of the act by the House, members have been explaining their votes. The mystic seven who voted in the negative, in general, stated their objections and their reasons for non-support prior to the passage of the act. Of those who voted in the affirmative nearly all since have been assiduously "explaining" their vote, urging various and sundry reasons, potent and otherwise. In truth, the measure was passed under a Republican whip and a Democratic cat-o'-nine-tails.

There was scarcely a speech worth the name on the constitutionality of the measure, and in the closing address a lawyer refused to answer a question involving its constitutional features. But one fact germane to the subject fortunately appears in most of the speeches. The remainder delivered either on the floor of the House or extended in the Record are largely words of political bias calculated to catch the ear of the constituent, designed to increase the vanity of the voters in the particular member's district. The lid was taken off the gas tank that all the world might be sensible of the odors. The books of logic and common sense were sealed.

In the Senate, the sheep bound volumes, wherein is supposed to rest the law, will be opened and used continually and deliberation will mark the Senate's debate. There are indications that the Senate will carefully consider the constitutional and advisability features, and also that no Republican whip or Democratic spur can force a vote upon a measure which now claims to be the offspring of four fathers. It remains to see who will, seven years hence, come forward into the limelight and say, "This is my child."

It was the late Tim Campbell, representing an East Side of New York district in Congress, who asked Grover Cleveland at the White House: "What is the Constitution among friends?" Other distinguished statesmen are today asking President Roosevelt practically the same question.

HAD the resolution, which Senator Tillman pitched into the Senate early last month, been passed without amendment, it would have furnished occupa-

tion for the Interstate Commerce Commission for many years to come. Broad in its terms, far reaching in its designs, it proposed to

**Investigation of
the Coal and
Oil Roads**

investigate pretty nearly everything relating to common carriers. With "whereas" appearing twice, and eight "resolves," the whole

field of transportation was covered. The resolution was trimmed down in the House, however, so that the Commission will have to investigate and report only on the business relation which the several carriers have to the oil and coal industries.

That many abuses have grown up through the ownership, not so much by the carriers themselves as through friendly interests, of commodities which furnish large tonnage, cannot be denied. It remains to see just how widespread these abuses are, and this having been determined, what remedy can be applied with safety.

In the usual course of business the Commission ought to file its report at an early date. If the report justifies prosecutions under the Interstate Commerce, the anti-trust acts, or other Federal statutes the ball ought to be started on its course very early. Some people, in this connection, are asking, if many of the evils which are now charged against the railroads as a direct result of their ownership of the commodities which they carry, if discriminations of all kinds have resulted therefrom, if the act has been violated, why with all the powers for investigation and prosecution at hand the subject has not received consideration earlier from the Commission.

How to be re-elected to the lower branch of Congress: Address the presiding officer and make a noise like a rate bill.

No one can fail to be interested and edified by reading the speech of Judge Hogg, of Colorado, on the subject of rate regulation, delivered in the House last month. It is clear, concise, and full of meat. The necessity for rate regulation is admitted

**Judge Hogg's
Speech on
Rate Regulation**

and the constitutional features are made plain for the layman. It lacks the twang of "made for home consumption," and all in all is one of the best we have

seen on the subject. The Judge strikes out from the shoulder, and in his frank way tells us what ought to be done in order to provide for a fair deal as between the shippers and carriers. The speech will be found in the article printed in this number of FREIGHT on the House debate on the Hepburn bill, and begins on page 117.

Was it chance, fortune or design by which President Mellen, of the New York, New Haven & Hartford, arrived at Washington on a recent Monday

morning, as he was returning from a trip to California? Was it chance, fortune or design by which

**Was It
Chance, Fortune
or Design?**

he had, before luncheon (the patrons of the Old Colony have barely opportunity for lunch) a conference with President Roosevelt? Was it chance, fortune or

design that led him to give out an interview after the conference with the President? Was it chance, fortune or design that the Supreme Court shortly after noon rendered an opinion by which a contract between the New York, New Haven & Hartford and Chesapeake & Ohio Railroads was declared illegal and void? Was it chance, fortune or design that led to another conference between President Mellen and President Roosevelt? Was it chance, fortune or design that prominent advisers were summoned to this last conference?

After interview No. 1 President Mellen is reported to have said: "I am for the President and his railroad rate program, and feel sure that before very long most of the railroad men of the country will realize that all he is trying to get is even handed justice for the railroad companies as well as the shippers. I am sure the people of the country are back of the President in this fight, and the sooner those who are opposing him realize that fact the better it will be for all concerned."

The next event, chronologically stated, was the decision by the Supreme Court, involving a contract between the road over which President Mellen presides and the Chesapeake & Ohio. By the terms of the contract President Mellen's road was the beneficiary to the extent of over \$100,000, but the court held it to be illegal and void and in violation of the present emasculated statute to regulate commerce.

But, lo! a whirl of car wheels and a hurried conference with the executive and his advisers—advisers summoned by telephone after the arrival of President Mellen—advisers must have been needed, the machinery was needing attention, the law had been interpreted liberally and sustained. The dictum of the Supreme Court in a case in which the New York, New Haven & Hartford was concerned had gone forth; it had been guilty of violating the act by accepting goods transported by another carrier at less than the published rates.

Consternation or congratulations? We know not, for nothing concerning this conference—conference No. 2—was given out. One must draw his own conclusions, grope in the dark and speculate.

We need not speculate, however, on one fact, for history records it. President Mellen is in favor of the Federal regulation and supervision, of railway rates, and yet he, for his road, was willing to be and was a party to a contract in violation of law. But it takes lawyers to know whether or not one does an act in which the law will condemn. Oh, Virtue, what are thy attributes?

INEQUALITIES OF THE SPOKANE RATE SITUATION

"The Coast Rate Plus the Local Rate Back" Pronounced Absolutely Untenable—Willing to Accept a Rate Slightly Higher Than the Coast Rate

BY L. G. MONROE

Secretary Spokane Chamber of Commerce

IN FREIGHT for January is an article by Mr. W. A. Mears, of Portland, Ore.—subject, "Transcontinental Rates and Water Competition"—in which the writer undertakes to defend the coast or so called terminal rates as compared with Spokane rates on transcontinental shipments. Mr. Mears alleges that the difference in rates to Spokane and to Pacific Coast terminals from the Atlantic seaboard and Missouri River common points cannot be regarded as a discrimination against Spokane, but the result of "water competition"; that Spokane's complaint is not on account of high rates per se, but because of rivalry between coast trade centres and Spokane for competitive business. After undertaking to convince an unsuspecting public, that government control of freight rates must result in the adoption of a distance tariff, he proves conclusively that a distance tariff is impracticable in transcontinental business, because the rates would be so high to the coast that the steamships and sailing vessels would do all the coast business, or they would be so low as to be confiscatory, which the Constitution prohibits.

The Glucose Episode

Granted that a distance tariff as applied to transcontinental business is impracticable, Mr. Mears has adduced no argument that the Interstate Commerce Commission or a court of review would be compelled to use such a tariff in determining existing evils in rate making and rate discriminations.

The glucose episode is certainly a corker. He says that, because Spokane got a terminal rate of 65 cents per 100 pounds on glucose, the New York refineries began shipping this article by water around the Horn at "probably a less rate than the railroad rate of 65 cents," whereupon and "finally practically all the glucose came to the Pacific Coast by water." The railroads could not stand for this. They must get back the coast business at any cost. How did they do it? Simply by raising the Spokane rate to 97½ cents per 100 pounds and the coast rate to 75 cents per 100 pounds. Of course, just as soon as the steamships saw that the railroads were really in earnest about the glucose trade, the vessels immediately turned turtle on glucose and went out of the business. I have a great

deal of respect for Mr. Mears personally, and would not desire to lead him into temptation, but I cannot refrain from saying: "Let's emulate the immortal governors of the Carolinas and take a drink."

The next citation is to show that the railroads are not only hauling glucose, but white lead, paints, canned goods and soap at a higher rate to the coast than the steamships are offering to do it. What these facts tend to show other than that water competition does not compete, despite the contention of Mr. Mears to the contrary, I fail to comprehend.

The sole trend of Mr. Mears' argument is that Spokane's claim for redress lies in the eastbound tariff—that is, the rates from the Pacific Coast back to Spokane. I admit that the discrimination in rates by the railroads is as flagrant in eastbound as in westbound shipments as far as Spokane is concerned. For instance, the rate on cereal food products from Portland through Spokane to Stonehill, Mon., on the Great Northern, and Dixon, Mon., on the Northern Pacific, a distance of 695 and 754 miles respectively, is 60 cents per 100 pounds. The rate from Spokane to the same points, a distance of 215 and 213 miles respectively, is also 60 cents per 100 pounds. The 60 cent rate goes even further; it applies to all Montana common points, and Portland is 541 miles west of Spokane. In other words, the railroads carry the Portland product 541 miles further and through Spokane for the same rate. Certainly in this instance Mr. Mears does not undertake to claim that "water governs the rate." Mr. Mears, however, did not refer to rates on goods originating at Portland, Puget Sound points or the interior district between Spokane and the Pacific Coast. Oh, no, he desires to have the outside world believe that Spokane's solution of the rate problem is to have a low distributing rate back from so called coast terminals on all transcontinental traffic, thus reducing the transcontinental rate to Spokane. This sounds well for oratorical purposes, but, instead of helping Spokane, it would be a detriment, and would eventually destroy the jobbing trade of this city and effectually prevent the establishment of a jobbing centre between the coast and Butte, Mon. This is a consummation devoutly to be wished for by the North Pacific Jobbers and Manufacturers' Association, so energetically represented by Mr. Mears.

Water Competition Theoretical

When Mr. Mears asserts that the Spokane transcontinental rate "must ever remain (on goods such as are continually shipped around the Horn) the sum of

NOTE.—Syrup, the only form in which glucose is shipped in quantity from the East, comes from Missouri River territory and not from New York refineries, on account of the shorter haul. Hence "quickness of dispatch" is the factor which has controlled this trade, and not "water competition." The railroads were quick to grasp the situation and arbitrarily advanced the rate 32½ cents to Spokane.

the transcontinental rate to the Coast, plus the local rate back," he is making use of a threadbare argument, every premise of which was disproved in the hearing of the case of the Spokane Shippers' Association vs. the Northern Pacific Railway et al., had before the Federal court about ten years ago, when the local shippers undertook by process of law to enforce the ruling of the Interstate Commerce Commission, which was for a more equitable rate situation for Spokane. It was conclusively proven at that hearing and by the testimony of Portland and Puget Sound shippers that the only articles on which water competition was actual and not theoretical were grindstones and shot.

Mr. Mears resided in Spokane and was engaged in the brokerage business at the time this case was fought out before the Interstate Commerce Commission. He was also one of the most active merchants in pushing Spokane's case. Of course, you understand that, while Spokane proved its complaint, the Interstate Commerce Commission was powerless to enforce a single decision, and when three years later the Spokane shippers brought an action in the Federal court to enforce the ruling of the Interstate Commerce Commission, the court hesitated to render judgment because of a similar action (known as the Georgia case) then pending before the Supreme Court of the United States, and finally decided in favor of the railroads—thus establishing a ruling on the long and short haul clause. The Master in Chancery, who was a San Francisco man and before whom the hearing was had, openly announced that Spokane was entitled to terminal rates. Mr. W. L. Benham, who was then Western traffic manager of the Great Northern Railway, was en route to Spokane from St. Paul with instructions to grant everything asked for by Spokane without further litigation, when the United States Supreme Court's decision (in the Georgia case) was handed down, and the instructions to Mr. Benham were recalled by President Hill. The decision in the Spokane case, which was handed down by Federal Judge C. H. Hanford, of Seattle, three months after the hearing, was conformatory to the decision of the United States Supreme Court in the Georgia case (the L. & N. Ry. Co. vs. the Interstate Commerce Commission, known as the Callo-way case), and of course was adverse to Spokane.

Passenger Traffic Competition

It is admitted by the railroads that they cannot successfully compete with sailing vessels for the transportation of goods between the Atlantic seaboard and Portland or other so called Pacific Coast terminals. In other words, that the ships will carry the goods for about 70 per cent. of the lowest bid made by the railroads. Hence, if it were not for (quoting Mr. Mears' own words) "quickness of dispatch, insurance of goods in transit, less liability of breakage and chafage," the railroads would not carry enough goods to the cities having all those lauded water competition facilities, from which a revenue could be earned sufficient to oil the wheels of a single train across the continent, unless, if the statements of the traffic officials are true,

the goods were transported at a loss, or on an "actually confiscatory" basis, which latter condition Mr. Mears says "the Constitution prohibits." From Mr. Mears' argument it would appear that the actual confiscation of the transcontinental railroads is prevented by the extra tax the traffic officials have been "compelled" to place on cities and localities not blessed with a sight of the sea. Still, Mr. Mears would have us believe that he is not an apologist for the railroads and that he is entirely in accord with the President, Judge Grosscup and other able thinkers "regarding the necessity of regulating the railroads." Regulating the railroads, mind you, but not regulating discrimination in freight rates. Mr. Mears has the grace to say, however, that he is "not certain in what manner the railroads should be regulated."

How the Present Rates Were Evolved

Is it not strange that not alone Mr. Mears but other Pacific Coast apologists for the interior rate situation never mention passenger rates? As a matter of fact, water competition enters into the passenger traffic about as largely as it does into the transportation of freight. I venture to assert that no Coast jobber would uphold a higher passenger rate to Spokane than to the Coast. As a matter of history, the transcontinental passenger rate to Spokane was the same as to Portland and Puget Sound points, and Spokane, it may be said, enjoyed terminal rates in the passenger line until 1901, when a differential of \$2.50 was made in favor of Spokane, yet we had heard no kick from the Coast. If the same fundamental principle were employed, the transcontinental passenger rate to Spokane should be about \$10 higher than the Coast rate, \$10 being the "local rate back." Again, if such a rate were in effect, it would do much to retard the settling up of the interior country and its consequent development. This much must be admitted. What effect the discrimination or "differential" in favor of the Coast in freight rates has had on the commercial life and consequent industrial development of the interior country I leave to the imagination of the railroad apologists. Certain it is that the Pacific Coast Jobbers and Manufacturers' Association is a unit in desiring the settlement and consequent development of the natural resources of the interior country, but this association is also a unit in demanding all of the commercial emoluments for the Coast and naturally so—this attitude being simply the exemplification of human nature as applied to modern business methods.

It is, therefore, safe to say that Mr. Mears did not undertake "to disabuse the minds of the people" on the Spokane situation "on account of high rates *per se*," but on account of what effect a fair rate adjustment would have on "competing trade centres," particularly on the trade centres he has the honor to represent.

Again, Mr. Mears takes a hypothetical case, and goes on to show that, if Spokane was without a railroad from the East, the freight rate "would be the rate around the Horn or across the Isthmus to Portland."

Seattle or Tacoma, or the coast plus the local freight back to Spokane, and it would make no difference whether that freight back from the coast was carried on the backs of Indians, by mule pack train, by ox team or by rail." I submit that Mr. Mears has inadvertently stated a fact or condition which existed at Spokane and all other interior points of the Pacific Northwest prior to the building of the transcontinental railways. I submit, further, that it was because or out of this peculiar condition in early days that the present rate situation was evolved. In other words, the railroads were quick to grasp the situation then existing, and because the people of the interior had been accustomed to paying freight rates based on Pacific Coast ports of entry, this basis was continued in force, not because of water competition, but because it was in the power of the transportation companies to take advantage of their opportunity, which they proceeded to do, and have held that advantage, unjust though it be, to this day.

It is significant to note that the first railroad entered Spokane from the west, and that trains were running between this city and Portland long before an Eastern connection was made. Is it strange that the rate to Spokane was the rate around the Horn plus the local back? It could not have been otherwise. Nor is it strange that, once this basis for rate making to interior points was established, it should be adhered to, when you consider that it was to the interest of the carriers to do so.

Spokane's Contention

In the light of present research it is apparent and almost wholly evident that had the railroads first reached Spokane from the east instead of the west, there would have been some tall rate cutting to get the business, water competition and all its attendant advantages to the contrary notwithstanding. I desire to go further and say that if the first railroad had been constructed from the East into Spokane and thence to the coast, water competition as applied today in the makeup of Spokane freight rates never would have been heard of, and Spokane and all other interior points would today be enjoying a proportionately just rate with that of the coast. It is therefore the claim of the people of Spokane that the basis of the Spokane rate—namely, the coast rate plus the local rate back—is unjust and absolutely untenable from the "square deal" point of view, and I submit that this contention never has been successfully controverted. I desire to emphasize this point, and do it most emphatically. The people of Spokane, while contending for equality with the coast terminal rates, have never sought an advantage over the coast—a less rate than the coast rate, but would be willing to concede a point to the railroads and "water competition" by accepting without protest a slightly higher rate than the coast rate, provided the rate is not based on the coast rate, plus the local back. That this attitude is just and eminently proper I shall now attempt to show.

I have stated that to continue the coast rates plus the local rate back as the basis for determining the Spokane transcontinental rate, and lower the sum of the totals by lowering the local rate back, instead of fixing an arbitrary lower rate without lowering the local rate back, would be a detriment rather than a relief, and would eventually destroy the jobbing trade of Spokane and all other interior points, and thus take from them an advantage to which they are entitled by geographical location and common equity. Then, again, it would be absurd to ask the railroads to cut their local rate simply to reduce a transcontinental rate to a certain point. I do not believe that Mr. Mears will contend that to lower a transcontinental rate to an interior point it would first be necessary to lower the distributing rate between that given point and the terminal. If he does, he will out-railroad the railroads as an apologist for modern methods of rate making—all the traffic will bear and the devil take the hindmost.

In support of Spokane's contention in this matter, I desire to call your attention to the following table of rates:

Table of Rates

A COMPARATIVE STATEMENT OF THE FREIGHT RATES ON WHICH CARLOAD RATES APPLY FROM EASTERN POINTS TO SPOKANE AND PACIFIC COAST TERMINALS IN ITEMS OF THE DRY GOODS TRADE:

	Cost rate	Coast, less than carloads.	Spokane, Carloads.	Differential in favor of coast L. C. against Spokane C. L.	Spokane, L. C. L.	Coast C. L. plus local back.	Differential in favor of Coast.
Cotton Piece Goods.....	1.00	\$1.50	\$1.85	\$0.35	\$2.85	\$2.35	\$0.50
Cotton Duck and Denims.....	.90	1.35	1.75	.40	2.70	2.25	.45
Cotton Drill and Sheetings.....	.90	1.35	1.75	.40	2.70	2.25	.45
Cotton and Wool Knit Underwear and Hosiery.....	1.50	2.00	2.35	.35	3.35	2.85	.50
Oil Skin Clothing.....	1.60	2.20	2.45	.25	3.35	2.95	.40
Cotton Yarn and Carpet Warp.....	.90	1.50	1.75	.25	2.85	2.25	.60
Table Oil Cloth.....	1.00	1.50	1.78	.28	2.70	2.20	.50
Linoleum.....	1.00	1.50	1.72½	.22½	2.70	2.20	.50
Window Shade Cloth.....	1.00	1.50	1.85	.35	2.85	2.35	.50
Window Shade Rollers and Fixtures.....	1.10	1.60	1.76	.16	2.95	2.45	.50
Trunks and Valises.....	2.20	3.00	3.05	.05	4.35	3.85	.50
Carpets.....	1.75	2.50	2.60	.10	3.85	3.10	.75
Notions.....	—	3.00	—	—	4.35	—	—
Corset Laces, Shoe Laces, &c.....	—	2.40	—	—	3.75	—	—

It must be borne in mind that four-fifths of all goods itemized above are shipped to Spokane in less than carload lots, hence the carload rate does not apply. Again, the Spokane merchant, if he should desire to engage in the jobbing trade, or if his retail business would justify carload shipments in certain lines and thus enable him to get the reduced carload rate, cannot ship in mixed carloads, but is compelled to purchase an entire carload of each item. The hardship would not be so great if he were permitted to combine linoleum and table oil cloth and carpets; or cotton piece goods, cotton duck and denims, drillings and sheetings; or window shade cloth and window shade rollers, fixtures, etc.

No merchant would be able to handle a mixed carload of oil skin clothing, cotton yarn or cotton warp, let alone a carload of each of these commodities. It is also a fact that no retail dry goods store in Spokane is

able to ship a carload of any article which is sold, with the possible exception of linoleum.

All of the above goods, with two exceptions, in less than carload lots, take a first class rate between Pacific Coast terminals and Spokane, which is \$1.35 per 100 pounds. The exceptions are second class, or \$1.20 per 100 pounds.

A careful comparison of the above rates will also show that the Portland and Seattle merchants can ship in carloads and reship in less than carloads for less than the retail merchant at Spokane can ship direct from the East in less than carload lots. For instance, cotton piece goods from New York to Portland, in carloads, \$1; less than carloads, Portland to Spokane, \$1.35—making a total cost of \$2.35. The less than carload rate from New York to Spokane direct is \$2.85, thus showing a discrimination of 50 cents per 100 pounds. This same discrimination is also found in nearly all other items mentioned. Of course, the matter of profit, which the wholesale merchants of Pacific Coast terminals would have to have for handling goods supplied to Spokane retail merchants, would just about eat up the difference in freight rates which the railroads have assessed against Spokane in favor of the coast. In short, the railroads have in this line of trade pursued the only policy the traffic officials have ever followed, their statements to the contrary notwithstanding, and that is to charge as much as the traffic will bear. It can readily be seen that if the rates to Spokane were just a little higher, Spokane retail merchants could buy all of their goods from Pacific Coast jobbing houses for less price than by buying from the manufacturing centres of the East. Are the Spokane rates unreasonable? In our judgment the railroads have stopped just short of extortion.

Discrimination Against Spokane

As shown by the table of rates on dry goods items, the railroads could adopt the figures shown in the sixth column as the L. C. L. rates to Spokane from Eastern terminals and still receive about 50 per cent. more than the L. C. L. rate to the coast. The figures in the sixth column are not from a railway tariff, but are made up as indicated by taking the coast C. L. rate plus the local rate back, and are given merely for comparative purposes.

Georgia's Stove Rate Case.

The famous stove rate litigation in Georgia was revived on Monday, February 12, but on that date Judge W. T. Newman granted a postponement in the United States Court, at Atlanta, until March 5, owing to the illness of W. L. Clay, counsel for the Atlantic Coast Line. Judge Newman denied the motion of W. A. Wimbish, attorney for the railroad commission, that the temporary injunction now pending against the commission be abolished. The enforcement of the commission's circular 309, which reduced the rates on stoves and hollowware throughout the State 30 to 35 per cent., is impossible until the question of a permanent injunction is decided. It is probable that the case will be taken to the Supreme Court.

"The Local Rate Back"

Let us now analyze the distributing rate, "which is the local rate back," as applied to Pacific Coast terminals and to Spokane. These rates, of course, apply on all of the above items mentioned, and are L. C. L. rates. Four examples will suffice:

Portland to

Riparia, 283 miles.....	\$1.25
Pomeroy, 320 miles.....	1.35
Dayton, 280 miles.....	1.28
Starbuck, 290 miles.....	1.25

Spokane to

Riparia, 148 miles.....	\$0.79
Pomeroy, 186 miles.....	1.26
Dayton, 192 miles.....	1.29
Starbuck, 156 miles.....	1.05

The rate on lumber from Portland, Ore., to Lewiston, Ida., via the Northern Pacific Railway, is 20 cents and involves a haul of 687 miles.

The rate on lumber from Lewiston, Ida., to Portland Ore., via the same route is 26 cents, the same length of haul.

The rate on lumber from Portland, Ore., Seattle, Wash., and kindred territory to Spokane, Wash., is 20 cents via the Northern Lines.

The rate on lumber from Spokane, Wash., and kindred territory to Portland, Ore., Seattle, Wash., and like territory, is 26 cents via the Northern Lines.

As before stated, the distance from Portland, Ore., to Lewiston, Idaho, is 687 miles, and the rate on lumber is 20 cents; the distance from Spokane to Lewiston, Idaho, over the same road (the N. P.) is 147 miles, and the rate is 13 cents. (Compare basis of charges.)

The Pacific Coast manufacturer has an average differential of 65 cents per 100 pounds between the principal raw iron products and finished machinery rates. The Spokane manufacturer has a differential of 17 cents, besides paying 48 cents more freight than the favored Pacific Coast terminals, although the actual haul is over 450 miles further and over a range of mountains.

In conclusion, I desire to say that Ray Stannard Baker can amply substantiate every claim he has made in *McClure's Magazine* relative to rate discrimination at Spokane. I have but pointed out a few of the ordinary inequalities in the rate situation here, which I believe to be sufficient, without entering into the numerous cases having to do with the more glaring inconsistencies.

New Process of Fruit Preservation

State Horticultural Commissioner Elwood Cooper, of California, who is at the head of a company called the American Fruit Company, is experimenting with a process of preservation for delivering fruit in exactly the condition picked to any market in the world.

The object is to arrest the development of the ripening of fruit. Fruit at a cost less than that of refrigeration may be delivered to the consumer at any point, unharmed in color or flavor, and then go on just where it left off. Some unknown gas is used in the process. Final experiments are now being made.

If you don't read FREIGHT regularly, you're handicapped in your business.

SEEKING GREATER SAFETY IN BILLS OF LADING

Financial Institutions of Baltimore Asked to Refuse All Carriers' Receipts Marked "Non-Negotiable," and So-Called "Uniform Bills" as Collateral

BY WILLIAM INGLE

Cashier Merchants National Bank of Baltimore

By a resolution adopted by the American Bankers' Association at its meeting held in Washington, the President of the Association was requested to appoint a committee of five to confer with committees representing the interests of both transportation companies and shippers with the view of securing the adoption of a bill of lading which would in a single instrument meet the needs of all concerned. This committee has been duly named, and its members hope that such suggestions as may be made in its behalf and which will be intended to reflect the opinion of the banking interests of the country will be given due consideration in the premises. The use of the "order" bill of lading has so rapidly increased during the last twenty years and its pledge as collateral to secure the advance of money is now so general, that were any course decided upon which would tend to seriously question its general availability for such a purpose, it is difficult to see how the commerce of the country could be conducted. More than to any other large class this will appeal to the large dealers, both those in the interior centers and at the coast ports, all of whom have to rely very largely upon the banks to furnish funds with which to handle the great staple crops as they move to the seaboard for shipment.

Importance of the Contract

The relatively smaller dealer, either in the West or South, in accumulating his goods in a local elevator or warehouse, can usually without trouble borrow on their contents from his neighboring bank, and those making the advance are generally in position to fairly well protect themselves, but the moment the commodity is on wheels or boat, he must have money with which to discharge his local obligation, and this he secures by drawing his draft on the larger dealer and attaching thereto an "order" bill of lading which upon indorsement, it has been generally supposed, gave to its holder for value an absolute title to the goods named in the paper. The draft upon payment by, let us say, the exporter upon whom it is drawn, is detached from its accompanying bill of lading, which is then used as a basis of credit pending the arrival of goods, there elapsing generally about a week and frequently, by reason of stress of weather or other interruption to traffic, a month or maybe two or more, before the carrier is able to fulfill its contract. As by far the greater proportion of such shipments reach their destination promptly and in good order, and as most "order" papers are handled by honest people, a mere shipping receipt would answer quite as well as

an elaborately drawn contract, were there not occasionally other conditions presented, either by reason of the fact that as the result of some unlooked-for accident the carrier is called upon to assume a greater responsibility than commonly, or a bill of lading falling into dishonest hands is misused. It is therefore to guard against the occasional and unusual happening that the conditions attaching to such papers become important.

In the event of the presentation of an equitable claim involving only a small amount, a carrier usually settles, frequently, however, after vexatious delays, which many times have the appearance of being made for the deliberate purpose of tiring the claimant. Such settlements are possibly finally made in order to avoid too common and public a discussion of the one-sided contract made in the interest of the carrier. It is therefore only occasionally and in a case of some magnitude that the contract embodied in a standard bill of lading finds its way into court, when it is found that its various clauses are full of defects and loopholes of escape, as might naturally be inferred. Both the banking and shipping interests respectively are widely scattered and incohesive and incapable under present conditions of united action, but we find, on the contrary, that the carriers have a most compact and effective organization in which their interests are closely guarded, frequently at the expense of the public upon which they live, and in no single direction is the safeguarding more in evidence than in the preparation of the conditions governing the use of the bill of lading.

Banks Not Protected

A year or more ago the carriers, in their endeavor to still further limit their liability, sought to introduce what they designated a "Uniform Bill of Lading." Although advance notices of the proposed paper stated that no material change had been made in the "conditions," an inspection of the paper showed several such changes, which, if without purpose, would not have been necessary. The most offensive and vital difference arose from the effort to compel a shipper, in return for some supposed concession in rate—which was not, of course, any concession at all—to join with the carrier's agent in signing the bill of lading, thus making of it a contract between the two principals only, subject strictly to its contained conditions and unsailable at common law in essential particulars. Such a paper, as far as its enforcement was concerned, would have been valueless in the hands of any third party,

for instance a bank which might have advanced money on it. The proposed document was so widely assailed that the carriers, postponing its adoption from time to time, finally promised to withdraw it, but in spite of this understanding, and following their common custom, they have permitted, if not encouraged, its use, until at the moment not a few such papers are seen, and for that matter held as collateral by banks which either know no better or dare not reject them for fear of offending some customer.

To meet the situation a conference of carriers and shippers was held in June last, at which meeting differently worded conditions were suggested. These radically failed to meet the situation, and at a meeting to be held early in December of this year the different interests will again meet, the shippers in the meanwhile having offered a new set of conditions which, while a great improvement upon anything heretofore used, are in many instances open to serious objections.

Essential Features of the Bill

The essential features of the bill of lading under discussion are contained in Conditions 1, 8 and 9.

Condition No. 1 as framed by the shippers is certainly fair to every carrier which expects to render service for which it is paid, and the adoption of either alternative suggestion would be notice to all concerned of the carrier's intention to use technical defenses to escape its responsibility in the event of loss amounting to enough to justify the publicity of a contest.

Clause No. 8, the "alteration" clause, seems to have entirely escaped the shippers, and if there obtains the view of the law as only very recently submitted to the Maryland Court of Appeals by the senior counsel in that State of the Pennsylvania Railroad Co., this particular condition should be much more clearly stated. This clause has heretofore been held to mean, certainly by banks and shippers, that any unauthorized alteration would be without effect against the carrier, and that the altered paper would have the original force intended. Counsel in case noted above—Court of Appeals of Maryland, October Term No. 56—claimed that any material alteration in a bill of lading rendered it absolutely null and void, and that the holder of such a paper could not inforce it against a carrier. In other words, it was sought to impress upon the court the view that an order bill of lading was subject in the matter of alteration to exactly the same rules as apply in the case of promissory notes. To follow this reasoning to a rational conclusion the following conditions would result: A carrier might issue a bill of lading for 10 barrels of flour which might be altered to 110 barrels by some unauthorized person. Under the above suggested interpretation of the case the carrier would not be legally responsible for even the 10 barrels, and the instrument by which it might be sought to inforce a claim therefor would have no standing in court. It is a matter of common knowledge that a large percentage of bills of lading are carelessly drawn, the carrier evidently relying upon

avenues of escape well known to it to escape the consequences. Very many bear altered dates and many bear no date at all. To decline to accept such papers would cause endless delay and confusion to all concerned, including the carrier, who would be confronted with many a disputed claim for demurrage caused by delay in securing proper papers. It was soberly claimed that the "alteration" clause had reference only to the *printed* matter in the papers.

To render perfectly plain the situation, it is suggested that the clause which should be the last of the series should end with these words: "and this bill shall have the same force and effect as it possessed before such unauthorized alteration," or words of similar meaning.

The banker is even more interested in the legal effect of Condition 9, the "order" clause. Intimately associated with the effect of this clause are the words "Not negotiable," which the carrier first sought to have appear on all such bills, they stating, however, that the use of the words was only for their protection against the laws of certain States, but adding: "In any event, if property is consigned 'to order,' the surrender of the Original Bill of Lading, properly indorsed, will be required before delivery of the property." How can this statement agree with their averment that the use of these words is not intended to limit their responsibility in any manner, when the learned counsel in the case above noted makes the point with legal references that the words "Not negotiable" "distinctly dominates the whole instrument"?

It was further claimed that order bills of lading were without force against the carrier in the hands of a third party for action in the event of their non-surrender to the carrier at the time goods were delivered, the assertion being made that "the bill of lading stood for and represented the cotton during transit and until it was delivered—but no longer."

The "Order" Clause

The "order" clause should be made to conform in substance to the present Maryland Statute, Act 1902, Chap. 125, which, after defining an "order" bill of lading, says that such order bills are negotiable instruments in the same sense as promissory notes and pass complete title upon indorsement, and that no condition of any character shall limit such negotiability, and further, should any carrier deliver goods named in such bill of lading without first taking it up and conspicuously marking it cancelled, such outstanding bill of lading would have the same force against the issuing carrier as though the goods had not been delivered. The act further imposes a money penalty for the violation of any of its provisions.

A carrier expecting to live up honestly to the plain intent of its engagements could have no possible reason to conceal this plain meaning under a mass of technical verbiage, and an insistence upon such involved matter must presuppose the purpose to escape its intended effect should occasion warrant.

Interests of banks, carriers and shippers are not at all antagonistic provided all assume a proper share of the risk. Banks freely accept an order bill of lading with draft attached from customers of acknowledged weakness financially, and at a discount of $\frac{1}{8}$ to $\frac{1}{4}$ of 1 per cent., or exactly the rate of exchange charged on exchange of other high character, and they should be furnished a paper which should be as surely collectible as a check.

A carrier in accepting merchandise (merely another form of money) for transportation should assume its full responsibility for the delivery of the goods or pay their value to the holder of its receipt. If it be urged that to undertake such additional (?) burdens would work hardship, it might be suggested that even under the established order of things the carrier is rarely able to escape the consequences of damage to goods in its care and the change would really only serve to prevent vexatious delays and lawsuits now usual in enforcing such claims. Any slight addition to the present freight rate of possibly 1 per cent., almost a negligible amount to each shipper. This responsibility would remove all uncertainty as to insurance, and the carrier being responsible for fire loss while its bill of lading is outstanding would insist upon consignees removing goods immediately upon arrival and prevent present abuses, greatly to the relief of shippers and banks handling "arrival" drafts.

As practically all of the shipments covered by order bills are of "interstate" character, it would appear to be a reasonable suggestion to have all interested request the Interstate Commerce Commission to propose to Congress the passage of a law on the subject and thus surmount the present difficulty of endeavoring to frame a document which will meet the general necessities of the situation—a thing almost impossible to do in view of the varying enactments on the subject by the several States.

Suggestion for a Form

The situation would be greatly simplified by the enactment of some such law which would provide for the use of uniform order bills of lading by all carriers in connection with interstate commerce. The provisions of such bill of lading should be only those as recited in the law, and it would be entirely unnecessary to print the conditions on the papers. These could then be issued in very simple form and be in general style something like warehouse receipts. The following might answer every purpose:

BILL OF LADING

Issued by

PENNSYLVANIA RAILROAD COMPANY

In accordance with Act of Congress, Chapter

Chicago, Ill. 190..

Received of John Smith, in Car No.

60,000 lbs. No. 2 Red Wheat.

Consigned to Thomas Jones, Baltimore, Md., to be

delivered only to John Smith or his order indorsed hereon and upon the surrender of this bill of lading.

Freight.....

PENNSYLVANIA RAILROAD COMPANY,

By Wm. JOHNSON, Agent.

Such bills of lading should be issued by the carriers to their local agents bound and numbered after the manner of a check book and the agents should be obliged to use exactly the same care in their handling as they now exercise in the matter of tickets. All such bills of lading should be printed or lithographed in a uniform way in order that all interested would learn at a glance the exact character of the papers. If some such simple document could be adopted, governed by fixed and simple conditions, the result could not but be beneficial to several interests all animated by a common desire to as safely and expeditiously as possible take care of the great and growing business needs of the country.

On January 23 Mr. Ingle addressed the following letter to the members of the Baltimore Chamber of Commerce and all other merchants of Baltimore who negotiate bills of lading with the several banking institutions of that city:

In the handling of a very large percentage of the commerce of the country the bill of lading or receipt issued by common carriers is being used with increasing frequency, and at present advances of money aggregating an enormous sum are made by banking institutions based upon the security supposed to be afforded by such instruments. Until about February, 1904, the form usually seen and used in this section of the country was what is known as the "Standard" form, reciting conditions which, while formulated by the transportation companies, had been very generally interpreted by the courts and as a consequence were fairly well understood by those using them. Carriers have recently been introducing a new form known as the "Uniform Bill of Lading," under the terms of which the holder yields important if not vital rights pertaining to the older form. A very material proportion of bills of lading issued reach the hands of the banker in an altered, mutilated or otherwise imperfect condition and the courts of Maryland have held that the contracts embodied in such papers cannot be enforced against the carrier. For the protection of the banking community it has become necessary to take such action in discriminating against such improper and imperfect bills as will serve to abridge their use. The banks, bankers and trust companies of Baltimore undersigned do therefore jointly and severally agree, that after May 1, 1906, bills of lading or carrier's receipts for the transportation of merchandise will not be accepted as collateral or otherwise negotiated when—

1. The words "Not negotiable" or their equivalent appear at any place on such papers.
2. When such bills bear changed dates or other material alteration.
3. When issued on so called "Uniform Bills of Lading."
4. When jointly signed by carrier's agent and shipper, the latter party to the contract when so signed waiving his common law rights.
5. When signed by carrier's agent in any way than with ink or indelible pencil.

None of the above regulations will be waived unless in each case and on the reverse side of a particular irregular bill of lading a responsible agent of the delivering carrier in Baltimore officially states that the bill is current for (desig-

nate merchandise) and that such merchandise will be delivered only upon the surrender to it of the paper in question indorsed by (name of consignee or bank). No missing indorsement on "order" bills will be supplied and guaranteed as has been the custom heretofore, until the institution furnishing such indorsement be supplied with proper bond of indemnity covering its risk in the premises. The above regulations refer only to "order" bills of lading.

In considering the suggestions contained in the above letter please bear in mind the following:

1. Adjudication of losses or differences in connection with shipments consigned to any destination in this State will be governed by Maryland law.

2. The words "Not negotiable" on a bill of lading are of controlling importance and no other provision of such a bill can waive their effect. They mean that papers so stamped cannot pass an unqualified title to any third party by indorsement.

3. Any fraudulent material change, such as date, quantity or in other written matter, absolutely voids the instrument, the Court of Appeals holding it to be against public policy even to permit a carrier to engage that any unauthorized fraudulent alteration would merely result in giving the paper its original intended effect.

4. If a bill be marked "Not negotiable" and a carrier delivers the merchandise to a proper consignee without taking up the bill such delivery makes the bill of lading a "spent" or "exhausted" bill. In such case a subsequent transferee can acquire title as against the carrier only by showing outside circumstances which may be held legally sufficient to preclude the carrier from asserting prior delivery.

5. Any bill of lading signed jointly by both carrier and shipper becomes a contract between them and is to be interpreted strictly by its own provisions, thus escaping the operation of common and statute law.

6. The so called "Uniform Bill of Lading" is, to all intents and purposes, valueless as collateral in the hands of any third party.

Banks in accepting bills subject to any of the infirmities above mentioned have little upon which to rely for security except the honesty and good faith of their customers; in other words, a plain promissory note without collateral would really be quite as safe.

On January 30 Mr. Ingle supplemented his letter

with the following communication to Douglas H. Wylie, president of the Baltimore Chamber of Commerce:

Referring to a certain letter issued under date of January 23 and which it is proposed to present to the financial institutions for adoption, the contents of which are familiar to many members of your body, especially those who handle "order" bills of lading, we have to further advise.

It has been brought to our attention that the exclusion of "Uniform Bills of Lading," as suggested in Clause 3 of the letter, might work a great hardship and possibly injury if such action were taken by those interested in only one city. In using the words "Uniform Bill of Lading" reference was made to a certain paper, so designated by the carriers, which they promised not to use until the conclusion of a discussion of the subject now in progress between them and the shippers. This paper, in addition to conditions varying in no very vital particulars from bills heretofore in use, provided for the non-negotiability of the document and the acceptance of the conditions by the shipper over his signature. The letter of the 23d inst. designated by its technical name a bill which it would be unsafe to accept as collateral. Freed from the two major defects named the document would no longer be especially objectionable, although several changes in its other conditions would improve its character. We therefore submit for your criticism the following amended list of objections which should render uncurrent "order" bills of lading, when—

1. The words "Not negotiable" or their equivalent appear at any place on such papers.

2. When such bills bear changed dates or other material alteration, such change not being especially noted by the agent signing the bill, and as provided not only in Condition 9, but also in Official Classification No. 27, page 18.

3. When jointly signed by carrier's agent and shipper, the latter party to the contract when so signed waiving his common law rights.

4. When signed by carrier's agent in any way than with ink or indelible pencil.

5. When issued on any form which in itself is not a complete bill, as, for instance, when a carrier's receipt refers to bill of lading or contract with the transportation company for which it is exchangeable.

Will you read into our letter the above five clauses in lieu of those first appearing?

A Few Plain Words About Private Car Lines

BY W. N. WHITE

To my mind there is no difference between the private car lines on every railway running into New York and Armour and his private cars west of Chicago. All are out to make money for their own private interests—not to benefit anyone but themselves. That this state of affairs should exist is entirely the fault of the legislatures which granted permission for the various railways to be built. Such permission was given in order to benefit the country at large, and before any railway could be built the permission had to be obtained. This proves that the legislature is master of the situation, and the legislatures, having made a bargain, should have seen that the parties with whom they dealt carried out their part of the bargain properly. If the public has been hurt by

these various car lines, it is the fault of the Legislature.

It seems very strange, but nevertheless it is a fact, that there is not a single line of railway running into New York but has some private car line. Who owns these private car lines? It has been stated, and I believe it is more or less correct, that these private car lines were started by some of the largest shareholders of the various railways, and started with the express purpose of receiving part of the profits on that particular railway to the detriment of the regular shareholders. It is a well known fact that some of these railways coming into New York now are not paying dividends on their ordinary shares, and that in other cases, where dividends are being paid, much greater divi-

dends could have been paid had the full return for the work done gone into the coffers of the various railways; but their partner, the private line, has eaten up a lot of their profit. It is sufficient for a private car line to have even its name on any through B/L—even if not on its own car—for it to receive, for a distance between Chicago and New York, \$12.50 per car out of the \$60 to \$90 received by the railway. Then, if the goods are in its car, it gets a further large proportion of the freight, merely handing over to the railway—its partner, its master, the party who has authority direct from the legislature to build the railway—merely the haulage fees, which is all the shareholder gets out of the business. Then, if a party in New York wants to send a carload of any particular kind of merchandise over any two lines of railways and he asks for the freight rate, say from New York to Milwaukee, or any such similar place, he is at once referred by the freight clerk of any New York railway to these particular car lines which are able there and then to give a through rate. With the knowledge that these private car lines are not working for the public, it at once can be seen that even the staffs of the various railways are so manipulated that they are unable or are not allowed to quote a through rate. You must apply to the private car lines, and, as all railways have their

private car lines, there is no “kick” coming from any railway. The only interest dissatisfied is the public, which is simply being “milked” for all it is worth, and the party who ought to see that these charges are just and proper between his line of railway and the public has his hands tied or his eyes closed—but his pockets are still open, because he is receiving a portion of these illicit charges from the private car line.

It is a well known fact that there is a large quantity of merchandise transported for which is charged considerably more for a shorter distance than for a longer distance. There are many places in this country 2,000 or 3,000 miles distant from New York that pay a less charge than a place a little more than half way, notwithstanding that this merchandise passed its place of destination on its way to the longer distance. That such a thing is allowed to exist is entirely due to the way in which the private car lines are working for their own benefit.

I have not seen a copy of the railway rate bills now being discussed in Washington, and do not know whether any of my remarks have been anticipated or otherwise, but I think I have stated enough here to demonstrate that, until the private car lines are put out of business, the question of rates cannot be properly adjusted.

Carrying Cost Problem of the United States Mail

Is the greatest shipper in the country—the United States Government—receiving a “square deal” from the railroads? Is it paying too much money for carrying the mails?

This question will probably receive the attention of Congress, and it is intimated that a horizontal reduction of five or ten per cent. may be made. The problem is full of complications. Experts find it impossible to agree upon the relation between the receipts in postage upon various classes of mail and the cost of transporting each class. Letters, newspapers, printed matter and merchandise are dumped together and carried at the same rate of speed. The basis of the pay is the “ton-mile”—that is, the railroads are presumed to be paid so much a ton a mile a year, whether the mail consists of letters, printed matter, merchandise or all classes together. The weight of the mail is ascertained—or rather guessed at—by estimating the total weight for four year upon the weights ascertained by ninety days’ actual weighing on each route.

Charges of “stuffing” the mails during the weighing period have been made frequently against various railroads.

The railroad companies themselves protest against the quadrennial weighing system, on the ground that it makes no allowance for the normal increase in the volume of mail consequent upon the growth of the country. They argue that while, perhaps, they may receive a fair compensation at the beginning of the

four-year period, before it has expired they find themselves carrying great quantities of mail for nothing.

How the Railroads Are Paid

The railroads receive pay in three forms for the transportation of the mails: First, compensation for the transportation of the mail itself, on the basis of weight; second, compensation for the postal car service; and, third, direct appropriations for “special facilities.”

The law fixing the rate for mail transportation was enacted in 1873 and amended in 1876 and 1878. The law of 1876 made a horizontal reduction of 10 per cent. and that of 1878 made another reduction of 5 per cent. Since 1878 no reduction in rates has been made, although the railroad rates for transporting freight and passengers have been reduced materially, and great economies have been introduced in the cost of transportation.

The rate of pay for transporting mail under the law of 1873 ranged from \$50 a mile a year for 200 pounds daily to \$200 a mile a year for 5,000 pounds daily, and \$25 for every 2,000 pounds daily weight above 5,000 pounds. The reductions of 10 and 5 per cent. by the acts of 1876 and 1878, aggregating 14½ per cent. reduction from the rates of 1873, fixed the rate for 200 pounds a mile a year at \$42.75, with corresponding reductions in intermediate weights up to 5,000 pounds, the rate for which was fixed at \$171. For every 2,000 pounds weight above 5,000 pounds

the rate became \$21.37 a mile a year. These rates are now in effect. A railroad carrying 100,000 pounds receives exactly as much as it received in 1879 for carrying the same volume of mail.

When the mail is carried in an ordinary baggage or compartment car the railroad does not receive compensation for the car or any part of it occupied by the mails. Its pay is based solely on the average weight of the mail carried daily the whole length of the route. But when a "full railway post-office car" is added to the train, the Post-office Department pays to the railroad a rental for the entire car, based upon its length. The mails carried in these cars are paid for, in addition, by weight. A car 40 feet long earns \$25 a mile a year, a 45-foot car earns \$30, a 50-foot car earns \$40, and a 55-foot or 60-foot car earns \$50 a mile a year.

The railway post-office cars used on most of the large railroad routes are 60 feet long and weigh about 100,000 pounds. They cost about \$5,500 each, and are built by the railroad companies according to specifications approved by the Post-office Department. The railroad receives its pay on the basis of the weight of mail transported in them.

An Expert Analysis

A railway post-office car travels on an average of 100,000 miles a year. It earns, therefore, about its own cost every year. This fact has served frequently as the basis of the erroneous charge that the Post-office Department paid the railroads in full every year for postal cars without obtaining ownership of them. The important factor of hauling and maintenance were overlooked. Some railroad men estimate that the average cost of maintaining a postal car is \$2,000 a year. The cost of hauling the car is difficult to ascertain.

The most searching analysis of the cost of hauling postal cars was made by Prof. Henry C. Adams, for the Congressional commission, in 1901. He took the most dense mail route in the country—that between New York and Philadelphia, on the Pennsylvania Railroad. The railroad at that time carried an average daily weight of 309,000 pounds of mail a mile of line, or about 150 tons a mile a day. It was paid an annual compensation of \$3,422 a mile, or \$93.75 a mile a day. The mail was carried on 140 trains daily, although 90 per cent. of it was carried on twenty-six trains. Taking the average cost a train mile at \$1, although it is actually much less, and calculating that two tons of mail would be carried to the car, Professor Adams reached the conclusion that the cost of the mail service would be \$3,796 a mile a year. This is more than was received from the Post-office Department.

But if three and one-half tons were carried in the postal cars, the cost would be decreased to \$2,244 a mile a year, affording the Pennsylvania a handsome profit for carrying the mails. And if the Post-office Department should load five tons into a car the railroad could carry it at a cost of only \$1,766 a mile a

year, or less than half the sum actually paid by the Government.

This calculation was made on the estimated cost of running a train at \$1 a mile, taking into account all operating expenses. The actual cost, however, is much less, according to the Interstate Commerce Commission. The New York Central estimates the cost of its passenger trains at 71 cents a mile, and mail trains are classed as passenger trains on account of the speed and other requirements.

If the actual cost a train mile could be ascertained and if the postal cars were loaded more heavily, it is demonstrable that the Government could make a great reduction in the rates of pay to railroads, at least upon the denser mail routes. Economy in loading appears to be an important factor in readjusting rates to a reasonable figure.

Railroad Subsidies

The third form in which the railroads receive pay from the Government for carrying the mails is that of a direct appropriation for "special facilities." This is nothing but a subsidy paid by Congress to certain railroads, and there is apparently no reason why all other railroads in the country should not be granted the same concession. These items are:

Southern Railway—Washington to Danville, Va., 238 miles, \$29,777.50 a year; Danville to Charlotte, N. C., 142 miles, \$17,750 a year; Charlotte to Atlanta, 267 miles, \$33,420 a year.

Western Railway of Alabama—Atlanta to Montgomery, 172 miles, \$21,451.25.

Louisville and Nashville—Montgomery to New Orleans, 318 miles, \$39,776.25.

Atchison, Topeka & Santa Fé—Kansas City to Newton, Kan., 201 miles, \$25,000.

This is a total of \$167,175 expended for "special facilities."

Cost of the Service

The total number of railroad mail routes is 3,064, and the total length of these routes is 200,965 miles. The annual travel on these routes is 362,645,731 miles. The annual rate of expenditure for mail transportation by rail—not counting the rental of postal cars—was \$41,504,345 on July 1 last. The estimated expenditure for the next fiscal year is \$43,253,000, being 5.75 per cent more than the appropriation for the current fiscal year, which was \$40,900,000.

The total number of postal car routes is 294, the total length of these routes 53,000 miles, and the appropriations for the current fiscal year was \$5,875,000. The estimated expense of this service for the next fiscal year is \$6,021,000, an increase of 2.48 per cent.

It is estimated that the railway postal clerks during the fiscal year 1905 handled 18,000,000,000 pieces of mail matter, exclusive of registered matter, of which 9,050,000,000 pieces were first class matter and the balance pieces of other classes. Of the second class matter, 618,000,000 pounds were handled during the year, an increase of nearly 50,000,000 pounds.

U. S. Supreme Court's Coal Contract Decision

THE Supreme Court has recently decided that where a common carrier is a dealer in as well as a transporter of a commodity it must practice as to itself no discrimination in the rates on this traffic, and where such carrier sells the commodity at less than the cost at point of origin and the published rate to destination, such contract is illegal and cannot be enforced by the purchaser; it would also seem that if the contract be for a long term and during the operation thereof, there be such change of condition that the selling price at destination become less than the contract price, the contract will become illegal by force of law. The right of a common carrier to deal in general merchandising or the purchase and sale of a particular article was not denied. The effect of the decision, however, will doubtless be to largely curtail the operations of railways in business, other than transportation.

The case arose in a suit instituted in the United States Circuit Court of the District of West Virginia by the Interstate Commerce Commission to enjoin the carrying out of a verbal contract under which the Chesapeake & Ohio Railway Company agreed to deliver at New Haven 60,000 tons of New River coal for the New York, New Haven & Hartford Railroad Company at \$2.75 per ton. The price of coal at the mines, plus the cost of transportation from Newport News to New Haven, was \$2.47 per ton, while the published rate from the mine to Newport News was \$1.45 per ton, and the bill was based on the claim that this was in effect a discrimination, in that the company carried the coal for less than the usual rates.

The company denied this and alleged that it was a loss it sustained on the price of the coal, and that it took this means to reimburse the New Haven road for some \$100,000 which it had lost through the inability to fill a previous contract owing to a strike of miners.

The Circuit Court held that there was no violation of the rebate provision of the Interstate Commerce

Act, but held that the contract between the two roads was illegal and enjoined its enforcement. The two roads and the Commission appealed.

The court takes up the verbal contract in question and also the previous written contract, which was for 2,000,000 tons, with deliveries guaranteed against strikes, by J. Pierpont Morgan. The written contract was made in 1896 and the verbal one in 1903; the latter covered defaults in supplying coal in the former. The various phases of both contracts are considered at length, and the conclusion was reached that they were void, as in violation of the Interstate Commerce Act, because the margin for freight rates was lower than published rates. Turning, then, to the question whether a carrier engaged in interstate commerce has the power to sell and transport in completion of the contract the commodity sold, when the price stipulated in the contract does not pay the cost of purchase, and the published freight rates, the opinion of the court, delivered by Justice White, says:

The previous decisions of this court concerning the Interstate Commerce Act do not afford much aid in determining this question. This is the case because, although that act was adopted in 1887, and questions concerning the import of the act have been often here, such questions have not generally involved the operation and effect of the act concerning the command that published rates be adhered to and the prohibitions against discrimination, favoritism or rebates, but have mainly concerned the meaning of the act in other respects; that is, involved deciding whether powers asserted as to other subjects were vested by the act in the Interstate Commerce Commission. There are several leading cases decided by the Commission which are relied upon by the two railroads, directly relating to the question we have stated, but, as we shall have occasion hereafter to weigh their import, we shall not now pause to analyze and apply them.

* * *

Concluding, therefore, that both the contracts made by the Chesapeake & Ohio with the New Haven were contrary to public policy and void because in conflict with the prohibitions of the Act to Regulate Commerce, it obviously follows that such contracts were not susceptible of being enforced by the New Haven and afforded no legal basis for a claim of the New Haven against the Chesapeake & Ohio, and therefore the court below was correct in so deciding.

Pennsylvania's Plans in and About New York

THE following statement has been issued, giving the status of the Pennsylvania Railroad Company's improvements in and about New York, and the scope of the plans involved:

"The plans of the Pennsylvania Railroad Company for the development of its facilities in and about New York include:

"(1) The completion of the four-track tunnel connection between the New Jersey and Long Island shores, which is now proceeding, and the building of the great passenger station at Thirty-third street, Manhattan.

"(2) The establishment of a terminal yard at Sun-

nyside, at the Long Island end of the tunnel, covering 8,700 city lots, or about 400 acres of what is now open and practically unused land, between Jackson and Thompson avenues, Long Island City.

"(3) The elimination of grade crossings on the Long Island system, involving the depression of all tracks on the routes within the Borough of Brooklyn, and the bridging of intersecting streets.

"(4) The reconstruction of the Flatbush avenue station, and the addition of new freight facilities at this point, in connection with the so-called Atlantic avenue improvement.

"(5) The general enlargement of facilities for freight

distribution in both Long Island boroughs through the establishing of eleven new or substantially new local delivery yards and terminals, as follows: Bay Ridge, between Sixty-fourth and Sixty-sixth streets, Fourth avenue and the Bay, 790 lots; Bay Ridge, Fifth avenue and Sixty-fifth street, 35 lots; Bath Junction, Fifteenth avenue and Sixtieth street, 44 lots; Parkville, Gravesend avenue, 98 lots; Manhattan Beach Junction, East Sixteenth street and Avenue I, 150 lots; Vanderveer Park, Flatbush avenue, 90 lots; Canarsie, Paerdegat Basin, 95 lots; Rockaway avenue, 80 lots; East New York, 566 lots; Bushwick Junction, 96 lots; Hunter's Point, Third street and Hunter's Point avenue, 109 lots.

"(6) The bulkheading and development of Newtown Creek as a water freight terminal.

"(7) The connection of Long Island freight traffic with the main line of the Pennsylvania by a ferry from the Bay Ridge terminal to the opposite New Jersey shore at Greenville.

"(8) The direct connection of freight traffic with the mainland by the link known as the 'Connecting Railroad,' to run from the boundary line of Brooklyn, at Fresh Pond, across Queens to the great East River Bridge projected at Ward's and Randall's Islands, and thence to the New Haven road at Port Morris, a short distance from the shore on the Bronx side. This connection also to permit through passenger service from either Brooklyn or Manhattan to New England; though not designed for local traffic.

"(9) The substitution of electric for steam motive power on the lines within the city, as rapidly as proves practicable.

"These improvements, many of which are well under way, will involve an outlay of about \$100,000,000, the greater proportion of which, that is, all above the cost of tunneling and the Manhattan passenger terminal, will be spent within Brooklyn and Queens.

"Results Expected.—The details of the work, as well as the results expected are set forth in the letter of Mr. Cassatt to the Mayor and chairman of the Rapid Transit Board, dated January 18, and since made public. The company recognizes the uncertainty of the returns from its great outlay, but relies upon future increase of business to justify it. It points out, however, that there can be no element of uncertainty in the benefits to the city, which would follow immediately. These include:

"1. The ending of the insular isolation of Brooklyn and Queens, and the development on a vast scale of the natural advantages of the outlying sections of these boroughs for manufacturing, and for commercial traffic with the rest of the United States.

"2. The opening of new and direct trunk line passenger routes, and the adaptation to them of every improvement of modern railroading.

"3. The reconstruction of existing lines in Brooklyn, and the removal of their objectionable features, to the material benefit of adjacent properties.

"4. The enhancement of real estate values generally, in the great districts tributary to the new system; with corresponding increase in the city's revenue from taxation."

The statement includes a presentation of President Cassatt's views in the matter of terms, the necessary franchise to be granted by New York city, and concludes:

"If, in short, the Pennsylvania Company, as a condition of the completion of this line in its system, is asked to pay charges different in basis from those laid upon any other link in that system, or upon any other trunk line that enters New York—and, in a sense, to surrender control of its own business—the city will be in the position of discouraging the undertaking rather than lending the reasonable co-operation its public importance justifies."

LONG ISLAND GRADE CROSSINGS

Grade Crossing Commissioner John S. Griffith recently addressed the Young Men's Club of St. Bartholomew's P. E. Church, Brooklyn.

"The creation of the Brooklyn Grade Crossing Commission," said Mr. Griffith, "was by a special act of the State Legislature, which became a law May 9, 1903, and the board is composed of five Commissioners appointed by the Mayor. The act provides that the city shall pay one-half of the cost of the improvements, up to a total not exceeding \$2,500,000 for the Long Island Railroad work, and \$1,000,000 for the Brooklyn Heights Railroad Company."

Mr. Griffith went on to state that the work is now fairly under way, and the next two years will witness great changes through the southern, eastern and western parts of the city.

The improvement to the New York, Brooklyn and Manhattan Beach Railroad has been styled the Bay

Ridge Improvement. The cost of this work has been estimated at \$6,000,000 or \$7,000,000, the city's share of the same being \$2,500,000. It is the intention of the railroad to build a great terminal at Bay Ridge, covering seventy-nine city lots, and electricity as a motive power will be used for operating all trains.

The object in view is the abolition of grade crossings which have been so disastrous. The worst menace is at Atlantic avenue, in East New York, where a grade crossing exists with the Atlantic Division of the Long Island Railroad, where many trains cross daily. The danger will be obviated by a tunnel. In all more than sixty grade crossings will be done away with, and the commission has power to provide for others.

Subscribers who do not receive their copies of FREIGHT promptly each month will oblige the publishers by acquainting them with that fact without delay.

“Just, Reasonable and Fairly Remunerative”

To the Editor of Freight:

SIR—I must join issue with you concerning your construction, or rather the possible construction, of what is meant by the description, “just, reasonable and fairly remunerative,” when applied to rates. It seems preposterous that this language could ever be construed to mean that rates should be fully remunerative. The term “fairly remunerative” can, it seems to me, never mean anything but moderately remunerative. I also wish to join issue with those who claim that the last two words do not add anything to the first two. The additional words are high sounding, and there is a rotundity in their use. It sounds well to refer to the rates as “fairly remunerative”; it sounds well to say that “the laborer is worthy of his hire.” It seems to me, however, that the parties who have inserted the words “fairly remunerative” have done so without regard to the interests of the shipping public or have inserted these words maliciously.

It is a well known fact, and one which has been substantiated by an enormous amount of evidence, that many rates are not remunerative; that they are so low that they return to the carrier no more than the cost of moving the car. I refer to rates upon what are ordinarily termed the low class commodities, such as building material, coarse agricultural and forest products. On many of these articles much of the tonnage, which is a large percentage of the total tonnage moved, is carried at rates which would not yield any return upon the bonds of the carrier, to say nothing of the preferred and common stock. I do not think the language can have any other than a deleterious effect upon the consideration of a particular rate.

Let us suppose that the rate upon a coarse commodity is attacked. The defense of the carrier would be that the rate itself is not remunerative. The reply is that, taken into consideration with other rates, the carrier earns a living. But the act clearly implies, if the language itself does not provide, that each rate must stand on its own basis, and be in and of itself (a) just, (b) reasonable and (c) fairly remunerative. If I am correct in what this language means, it will permit the carrier to raise the rate upon those commodities which the farmer, lumberman and the miner produce.

Again, the terms “just and reasonable,” in connection with rates, have now a definite fixed meaning, and I cannot divine why the Legislature should attempt to mark out a different class of rates from those for which the shippers have been striving for years. What I have said concerning some of the low class commodities applies, I believe, equally strong to some of the high valued manufactured articles.

It has been the habit and custom of the carriers to charge what the traffic would bear. High class commodities, as a rule, being unduly remunerative, and low class commodities being handled at less than cost. It has been the game of robbing Peter to pay Paul. If each rate is to stand upon its own basis and be even moderately remunerative, I think it behooves the merchants to sell out their business and invest what they have in railway securities.

K. A. DAVIS.

NEW YORK, February 19, 1906.

OHIO RAILROAD LEGISLATION

Much attention has been attracted to railroad matters in Ohio by the passage of the 2 cent fare act by the State Legislature. The law becomes effective March 10.

The Central Passenger Association, which met at Chicago, February 14, discussed the Ohio situation, and seemed to be of the opinion that a crisis has been reached in the affairs of the railroads of the country. There were present 100 passenger traffic managers and general agents, representing 54 railroads, including the Gould, Vanderbilt and Cassatt systems. One manager is quoted as having said:

“The public is going to lose instead of gain by such measures. The railroads will curtail expenses by withdrawing trains. The State that compels the railroads to grant a 2 cent rate will find its passenger service comparatively crippled. Where some roads have run a dozen trains daily through Ohio, they will now run two or three. There will also be fewer safeguards against accidents and crowded trains.”

J. J. Brooks, general counsel of the Pennsylvania,

takes an entirely different view of the matter. He says:

“The law is valid, and the only thing we can do is to operate under it the best we can. We mean to give the 2 cent rate a fair trial. We do not wish to take off trains, reduce the speed of trains or do anything else that will make the service poorer.

“However, if we find that we cannot maintain service as good as at present and make a fair revenue from our passenger traffic, we will prepare data and statistics which we will present to the Legislature at its next session, and will ask for the repeal or modification of the 2 cent law. It is probable that Ohio will have a railroad commission by that time, and the matter ought to be referred to that body. We shall make no protest against the law if we can make a fair revenue under it.”

Similar statements have been made by officials of the Lake Shore & Michigan Southern, the Erie and Nickel Plate roads.

Nearly every tariff reading to an Ohio point will have to be readjusted in order to comply with the statute.

Shipping Heavy General Electric Machinery

BY MAJ. H. A. GIFFORD

THE development of electrical manufactures, leading as it has to the design of generating units of constantly increasing capacities, has brought up some difficult problems in the transportation of large and heavy pieces of machinery. The largest electrical manufacturer in the world is naturally the one to encounter the most interesting experience resulting from this growth. A factory whose incoming freight for one year, including raw material for its manufacturing operations, its fuel and building materials, amounts to

The armatures of slow speed revolving field engine driven generators of large capacity are necessarily of large dimensions and heavy weight, but such parts are always built so that they may be shipped disassembled, and therefore do not present any extraordinary difficulties in transportation. The largest engine driven generators installed in New York city—the 5,000 kilowatt Interborough Rapid Transit Company's machine—have armatures which are 42 feet high, 44 feet long and 9 feet wide at the base and weigh 558,000 pounds,

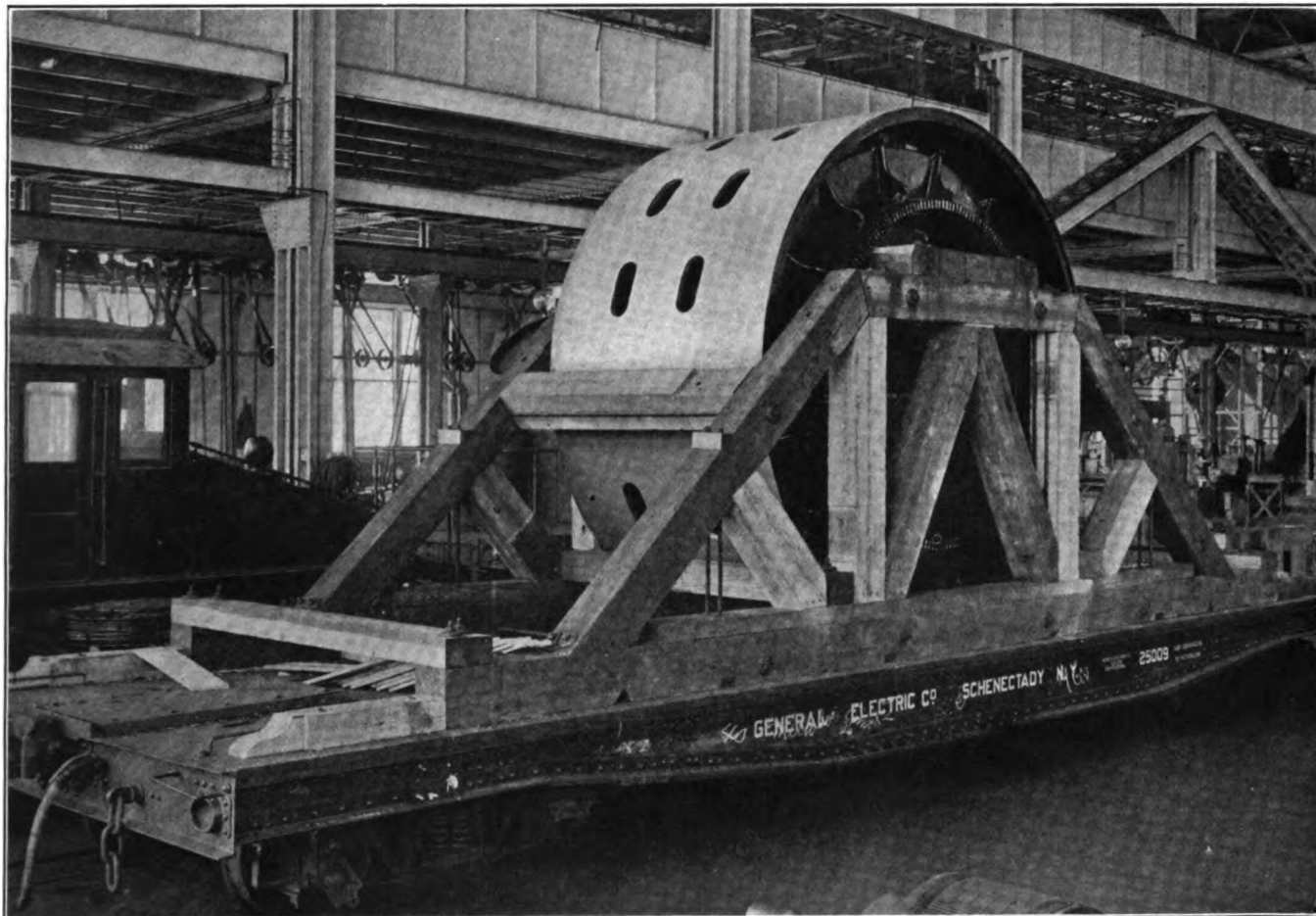


FIG. 1—ARMATURE OF THE FIRST 5,000 KW. CURTIS STEAM TURBINE-GENERATOR BUILT AT THE SCHENECTADY WORKS OF THE GENERAL ELECTRIC COMPANY IN PLACE ON ITS CAR READY TO BE HOUSED FOR SHIPMENT TO THE CHICAGO EDISON COMPANY

more than 350,000 tons and whose outgoing freight for the same period exceeds 150,000 tons, must handle all kinds, sizes and shapes from the annual incoming 133 miles of freight cars and must exercise more than ordinary care and foresight in preparing machinery for shipment in the 50 mile outgoing freight train.

It is interesting to note some of the special shipping arrangements that have been developed to handle the mammoth single pieces of electrical machinery now manufactured by the General Electric Company at Schenectady, N. Y.

but these were built in seven sections and assembled at the place of installation.

On the other hand it is quite advantageous to build an entire armature in one piece ready to be installed, thereby saving a large amount of work at the factory and avoiding the necessity of sending expert armature winders to the place of installation. The method of constructing the armature in one piece is adopted by the General Electric Company in the manufacture of the Curtis steam turbine generator in all sizes, the largest of which at the present time is capable of gen-

erating 12,000 kilowatts, though normally rated at 8,000 kilowatts. The armature of one of these 8,000 kilowatt turbine generators is naturally a heavy piece to ship, notwithstanding the fact that the weight efficiency of the turbine generator is high compared to

ture and its extreme height compared with the ordinary box car. Under these conditions the armature was moved from Schenectady to Chicago in safety. The armature shown on this car is the heaviest single piece of freight ever shipped by the General Electric Company.

Orders received by the General Electric Company for four 5,000 kilowatt and two 8,000 kilowatt turbine generators for the New York Edison Company's Waterside Station and eight 5,000 kilowatt turbine generators for the Port Morris and Yonkers stations of the New York Central Railroad again brought up the question of transportation. The armature of each of the 5,000 kilowatt machines consists of a single piece about 12 feet in diameter and 8 feet wide, weighing about 122,000 pounds without the bearing bracket. It was found that by using the General Electric Company's new flat cars of special low type and 135,000 pounds capacity the armature could be shipped as far as Port Morris, but only by a roundabout route, as the height of the bridges and the width of the roadbed between Schenectady and Yonkers would not admit of transporting the armatures direct by the Hudson River division of the New York Central. In order to forward the shipments from Port Morris on, it was proposed to lighter them from Port Morris to Yonkers and New York.

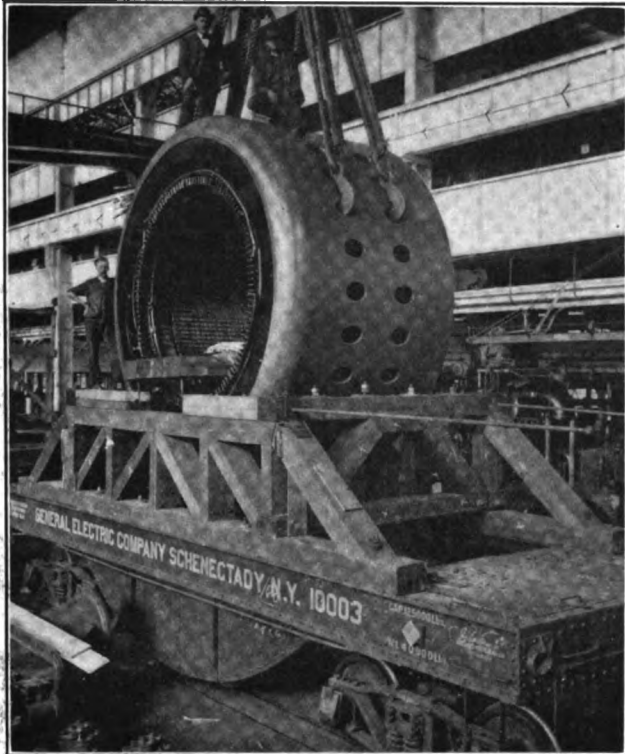


FIG. 2.—SPECIAL CAR GE-10.003 FOR SHIPMENT OF LARGE TURBINE-GENERATOR ARMATURES, SHOWING A 5,000 KW. ARMATURE BEING LOWERED INTO PLACE

that of an engine driven generator of equal capacity on account of the comparatively high speed permitted by the turbine drive.

The armature of the first 5,000 kilowatt Curtis turbine generator (built for the Chicago Edison Company's Fisk Street Station) weighed about 110,000 pounds, without the top bracket. It was found that no railroad in the country had available a car of sufficient capacity to transport the armature, while even the heaviest General Electric Company's special freight car was rated about six tons too low for the purpose under the Master Car Builders' rules.

The armature was, however, loaded on its car, and after careful examination by inspectors of the New York Central Railroad Company the shipment was accepted for transportation by that road and was ordered forward "special," i. e., with a special locomotive and picked crew, and with only a sufficient number of cars to ballast the train.

Fig. 1 shows the armature in place on its car, ready for housing, and Fig. 4 illustrates the housed arma-



FIG. 3.—SPECIAL CAR GE-10,003 WITH 5,000 KW. TURBINE-GENERATOR ARMATURE LOWERED INTO PLACE IN ITS CRADLE, READY TO BE HOUSED FOR SHIPMENT

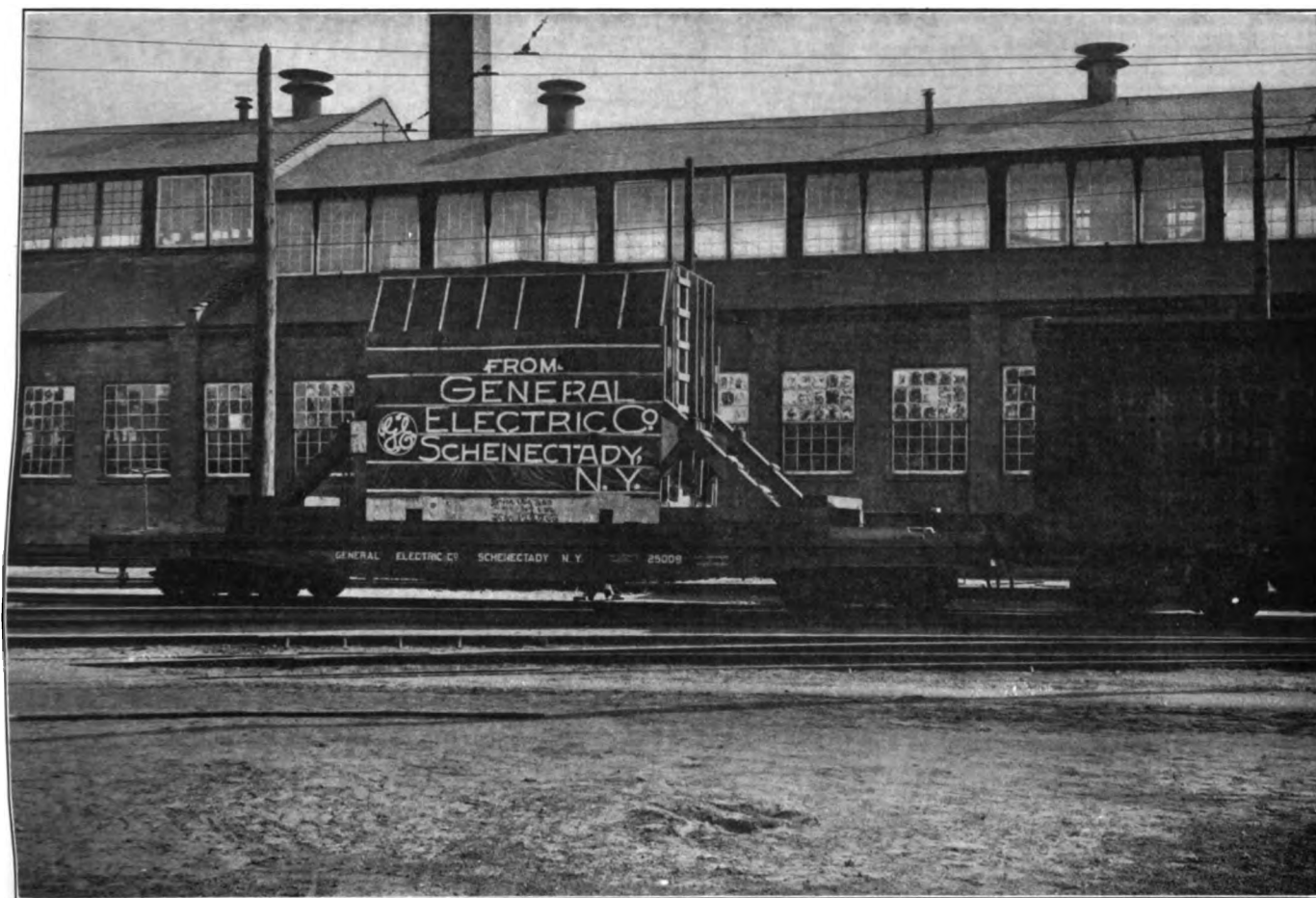


FIG. 4.—ARMATURE OF FIRST 5,000 KW. CURTIS TURBINE-GENERATOR BUILT AT THE SCHENECTADY WORKS OF THE GENERAL ELECTRIC COMPANY HOUSED ON CAR READY FOR SHIPMENT. (SHOWING COMPARATIVE HEIGHT WITH ORDINARY BOX CAR)

The inconvenience of this lighterage and its excessive cost on each piece led the General Electric Company to seek further means of transporting the armature over the direct all rail route. Accordingly, a new flat car, specially designed to transport heavy machinery within the standard railroad clearances, was purchased at a cost about equal to the lighterage charge on the shipment of one armature only.

The accompanying illustrations, Figs. 2 and 3, show one of the 5,000 kilowatt armatures for the New York Edison Company being loaded on this new car (GE-10,003), and in its final position on the car ready to be housed for shipment, respectively. The car has a carrying capacity of 125,000 pounds, with privilege of 10 per cent. overload. It is 32 feet long and 5 feet 6 inches high above the rails, and has a rectangular well 15 feet long and 8 feet wide, which allows a ship-

ment the size of an 8,000 kilowatt armature to be supported with its bottom about 6 inches above the top of the rails. The well is inclosed in sheet iron, to protect the load from dirt, and the load is slung on four heavy iron straps, which are secured in a timber truss bolted to the deck frame of the car.

The General Electric Company now has fifteen special freight cars, of 1,630,000 pounds aggregate capacity, including three cars built with a well as described above. It is worthy of note that the transportation department details a man to keep in constant touch with all of these cars, by telegraphic communication with all of the roads over which shipments are made. Notwithstanding this special organization for expediting the return of "empties," the congestion of the railroads is so great that deliveries of several large machines have been delayed for lack of cars to ship them.

C. W. Morse's Steamship Properties

Charles W. Morse is now in full control of the Morse Steamship Company, incorporated at Augusta, Me., with a capital of \$14,000,000, which includes the Clyde Line, for which he paid about \$7,500,000. Upon this purchase price the line is earning about 10 per cent. annually. The total capitalization is:

	Stock.	Bonds.	Strs.
Morse (Clyde)	\$14,000,000	\$4,000,000	40
Metropolitan	3,000,000	1,000,000	8
Eastern	3,000,000	1,798,000	15
Hudson Navigation (People's Line)	4,000,000	1,000,000	5
Totals	\$24,000,000	\$7,798,000	68

U. S. Supreme Court Sustains Joint Tariffs

THE unanimous decision of the United States Supreme Court, delivered by Justice Peckham, in the case of the California Citrus Fruit Growers' Association vs. the Southern Pacific, Atchison and other railroads, reverses the order of the Interstate Commerce Commission as to what constitutes illegal pooling and affirms the practice of joint tariffs.

Justice Peckham says:

It was clearly shown that if the Eastern roads, party to the agreement, should give rebates on the joint through rate tariff, thereby carrying freight below the rate fixed, that road would not get the freight. We see nothing in the initial carrier endeavoring to maintain the rates agreed upon as a through rate tariff and thereby preventing the payment of rebates, which in itself is a violation of the act. The act especially prohibited any alteration of the rates agreed upon in favor of any person or persons. There is no finding that there has been in fact, as a result of the rule, any discrimination between the initial carrier and the shippers themselves, and there is no evidence that any was ever practiced.

In the examination of the rule it is well to bear in mind the situation of the companies and the business at the time of its adoption, which is fully set forth in the statement of facts. The payment of the rebates was a shame, and was, in truth, unsatisfactory to all the railroads, besides being plainly a violation of the commerce act. We think there is nothing in the act which clearly prohibits the roads from adopting the rule in question. The decision turns upon the construction of a statute which at least does not in terms prohibit.

The evidence shows that the traffic was fairly apportioned among the Eastern roads; that it went by the shortest routes and that no shipper was denied the privilege of routing. Neither did it appear that the mere existence of the right of the company to route ended the practice of rebating. The opportunity to obtain rebates on the part of the shipper, however, was surely not a ground for action by the Commission, or by the court. Of course, if in attempting to cut off rebates there was a violation of the act, the act must be followed, and means of prohibiting them must be abandoned. The rule, however, did not violate the statute.

It is conceded that the different roads, forming a continuous line of road, were free to adopt or refuse to adopt joint through tariff rates, and it is equally plain that an initial carrier might agree upon joint through rates with one or several connecting carriers, who between each other might be regarded as competing roads. So also is it true that the common carrier need not contract to carry beyond its own line.

but may there deliver to the next succeeding carrier, and thus end its responsibility and charge its local rates for transportation. If it agreed to transport beyond its own line, it might do so by such line as it chose. As it was not bound to make a through contract, it could do so on such terms as it might agree, at least so long as they were reasonable and did not otherwise violate the law. In this case the initial carrier guaranteed the through rate, but only on condition that it had the routing. Having this right to agree on a joint through tariff on terms mutually satisfactory, we cannot find anything in the commerce act which forbids the agreement with such a condition therein as routing.

As to the finding that the agreement was in violation of the pooling clause, because it destroyed competition, and that the routing was a means of effecting a division of the tonnage, Justice Peckham said:

The court is of opinion that the arrangement for routing was to break up rebating and that it had been accomplished. The evidence shows that the Eastern roads had gone into it because they were satisfied that it would be better than the then existing system of rebating, and that under it they would get their fair share of the business. The testimony shows that not one of the Eastern roads knew the percentage of the traffic which it received, and altogether the tonnage pool was a myth.

The various roads party to the agreement are not competing roads within the meaning of the fifth section of the commerce act. Prior to its adoption there were through traffic rates in use which practically did away with competition, for under it the only way rate competition could exist was by violating the rebate law. This, unfortunately, was often done, and during that time the competition consisted in a rivalry between these roads as to which would be the greatest violator of the law by giving the greatest rebate. In truth, the only way these connecting roads could legally become competing roads for the fruit trade would be in the absence of all joint traffic rate agreements. The moment they made such agreements and carried them out rate competition would cease.

In such case we do not see any violation of the pooling section of the act by putting in the agreement for joint through rates the provision for routing by the initial carrier. It achieved its purpose and stopped rebating, although it thereby also stopped rate competition, which, in the presence of the through rate tariff, was already illegal.

The effort to maintain the published through joint tariff rates is entirely commendable. We do think that the agreement in question, upon its face, does not violate any provision of the commerce act, and there is no evidence in the case which shows that in fact there has been any such violation.

ACCIDENT STATISTICS FOR 1905

Some 8,853 persons were killed and 52,514 were injured on the railways of the United States during the year 1905, according to reports made to the General Managers' Association, of Chicago.

The following summary of accident statistics is made up from the annual statements of the railways for the year 1905:

	Killed.	Injured.
Passengers—		
In accidents to trains.....	336	5,913
In other accidents	119	3,869
Employees—		
Trainmen	1,832	28,359
Other employees	1,099	6,992

Other persons—	Killed.	Injured.
Trespassers	4,591	4,973
Not trespassing	876	2,408
Total (193,404)	8,853	52,514

An analysis of the 89 "prominent" collisions in 1905 classifies them as follows:

Kind of Train in Collision.	Number of Collisions.	Killed.	Injured.
Passenger and passenger.....	12	107	592
Passenger and freight.....	30	145	614
Freight and freight.....	47	48	149
Total	89	300	1,355

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALENDAR OF HEARINGS

Kansas City, Mo., March 12, 1906

In the matter of the transportation of petroleum and its products from points in Kansas and Indian Territory to interstate destinations.

Potecasi, N. C., March 19, 1906

C. E. Davis vs. Seaboard Air Line Railway. (Taking of testimony by deposition ordered.)

COMPLAINTS FILED

Hastings Malting Company vs. Chicago, Milwaukee & St. Paul Railway Company

Unreasonable rates on hard and soft coal from Superior, Wis., to Hastings, Minn.

Hastings Malting Company vs. Chicago, Milwaukee & St. Paul Railway Company

Unreasonable rates on cattle, malt, wheat and other grain, from Hastings, Minn., to Milwaukee, Chicago and Louisville.

D. & K. Fertilizer Company vs. Chicago, Burlington & Quincy Railway Company et al

Unreasonable advance in rates on sulphuric acid in tank cars from La Salle, Peru and Winona, Ill., to Indianapolis, Ind.

Star Hame Company vs. Baltimore & Ohio Southwestern Railroad Company et al

Unreasonable rates on hames from Blanchester, Ohio, to Montgomery, Ala.

Star Hame Company vs. Baltimore & Ohio Southwestern Railroad Company et al

Unreasonable rates on hames from Blanchester, Ohio, to Selma, Ala.

HEARINGS HELD

January 26-27, Chicago Ill.—R. R. Shiel & Co. vs. Illinois Central Railroad Company et al. Advances in rates on cattle, sheep and hogs, in carload lots, from points along defendants' lines to points in New York, Massachusetts and other Eastern States.

February 1-2, Louisville, Ky.—Railroad Commission of Kentucky vs. Louisville & Nashville Railroad Company et al. Unreasonable freight rates from points east of the Mississippi and north of the Ohio Rivers to Owensboro and Henderson, Ky.

February 20, Cleveland, Ohio.—National Machinery and Wrecking Company vs. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company et al. Unjust classification of second hand dynamos.

Discrimination in Favor of Standard Oil

The Commission has ordered an inquiry and investigation of the Atchison, Topeka & Santa Fé Railway Company; Missouri Pacific Railway Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company; Chicago, Rock Island & Pacific Railway Company; Union Pacific Railroad Company; Kansas City Southern Railway Company; Chicago, Burlington & Quincy Railway Company; and St. Louis Southwestern Railway Company, in respect of the reasonableness of the rates on oil from points in Kansas and Indian Territory to interstate destinations, and discriminations alleged in favor of the Standard Oil Company. The case is set down for hearing at United States Court rooms, Kansas City, Mo., March 12, 1906.

Rates on Flour Over Mobile & Ohio

In the case of S. J. & S. Cannon against the Mobile & Ohio Railroad Company, the Commission has rendered a decision, prepared by Commissioner Clements, the main facts and rulings in which are shown below:

In the adjustment of rates as between places on its line, a carrier cannot rightfully ignore the relative cost of the respective services, but there are other matters equal in importance to that of cost of service, and often more controlling, which must also be considered, and this includes competition of carriers and competition of markets.

It is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate, and these are to be considered in connection with the many other factors that enter into the adjustment of rates, but it does not necessarily follow that a rate is unreasonable because on the same or another road a particular kind of traffic is hauled a greater distance from a different point of origin at the same or a less rate.

Rates on flour from Louisville and Evansville by the Southern Railway to Berry, Ala., on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo, Ala., on the line of the Mobile & Ohio, are less than those on the Mobile & Ohio from Ava and Cairo, Ill., to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter, and much greater than that from St. Louis by the Mobile & Ohio. These facts do not warrant a conclusion, however, that the flour rates from St. Louis, Ava and Cairo to Gordo are unreasonable.

The carrier's published tariffs to various points in Alabama, including Gordo, as well as those of the Louisville & Nashville, Southern and Illinois Central, to some points in Alabama, show in some instances

charges per barrel of flour considerably less than double the rate per 100 pounds in sacks, while in other cases, as in the instance of Gordo, the barrel rate is materially in excess of double the rate per 100 pounds in sacks, and this notwithstanding the weight of a barrel of flour is substantially double the weight of flour as shipped in sacks. The rates on sack flour are commodity rates, and the evidence leads to the inference that shipments of flour in barrels would be given double the rate on flour in sacks, although this may not correspond to the actual published rate on flour in barrels. On this point, the Commission holds that it is manifestly contrary to law, and leads to confusion, for one line of rates to be retained in the published tariffs while others are in fact used on actual shipments, and that so long as carriers in Southern Classification territory deem it necessary to retain Class F in their classifications and publish rates applicable thereto, including flour in barrels, and at the same time publish commodity rates on the same article in sacks, there should be uniformly a just relation in such rates. The case is retained with respect to the rates in question on flour shipped in barrels, unless the same are changed to conform relatively to those applied to shipments in sacks.

Unreasonable Rates on Potatoes

The case of F. J. Hoerr against the Chicago, Milwaukee & St. Paul Railway Company involved the reasonableness and justice of the carrier's rates on potatoes from Mankato and Good Thunder, Minn., to Eastern destinations. The decision of this case, in an opinion by Commissioner Prouty, is abstracted as follows:

In October, 1902, the complainant shipped over the carrier's road and connections a carload of potatoes from Good Thunder, Minn., to Washington, D. C., on which the rate was 46 cents per 100 pounds, and another carload of potatoes from Mankato, Minn., to Scranton, Pa., on which the rate was 50.2 cents per 100 pounds. As there were no through rates in force, the Good Thunder shipment was moved at the combination of the published rates to and from Chicago, and upon the Mankato shipment there was \$13.39 overcharge above the published combination rate of 47 cents. In 1889 the "Soo Line" put in through rates on potatoes from St. Paul and Minneapolis to New York, Philadelphia and Boston of 40 cents per 100 pounds, which were met by the American lines. The "Soo Line" kept the rate in force until April, 1898, when it was withdrawn, and in June, 1898, all lines, including the "Soo Line," put in force rates of 37 cents to New York, 40 cents to Boston, 35 cents to Philadelphia, and 34 cents to Baltimore. These rates were not effective from Mankato or from Good Thunder, the first station south of Mankato. By most lines the St. Paul and Minneapolis rates to the eastern points mentioned applied as maximum rates to intermediate points. From September, 1900, to April,

1903, the Chicago Great Western had in force a rate on potatoes from Mankato to eastern seaboard destinations 2 cents higher than from St. Paul, and apparently this rate was also used over the Chicago & Northwestern line. The complainant can not handle potatoes at Mankato or Good Thunder for these eastern shipments under the Chicago rate combination. At the time of the shipments above specified complainant was shipping over the Great Western and Northwestern at 2 cents above the St. Paul rate. Though the through rates from St. Paul are the result of competition, they have been long in force as normal rates, are reasonable and just, and as high as could properly be applied to this traffic. The conclusions of the Commission, on the facts above stated, are as follows:

If the rate on potatoes from St. Paul to Atlantic seaboard points was made by the Canadian Pacific line alone, independent of the defendant, it might be urged, upon the strength of the decisions of the Supreme Court of the United States, that the defendant could meet that rate without regard to competitive territory served by it. In such case it could, with truth, be said that St. Paul would enjoy the lower rate in any event and that Mankato was in no respect injured by the fact that the defendant participated in the traffic. That would, in substance, be the *Chatanooga case*, 181 U. S. 1.

Such is not, however, by any means, the case before us. The Canadian Pacific line maintained for some nine years a rate of 40 cents to New York and Philadelphia. It published no rate to Baltimore. The rates in question are 37 cents to New York, 35 cents to Philadelphia, and 34 cents to Baltimore. Not only did the Canadian Pacific never publish these rates, but it is reasonably certain that it never would have published them but for the action of the American lines, of which the defendant is an important member. When these rates were first established by the Western Freight Association, in behalf of all lines, it could be said with much more propriety that the Canadian line met the rate of the defendant to New York, Philadelphia and Baltimore than that the American line met the rate of the Canadian Pacific to those points. These rates are the outgrowth of a variety of competitive conditions; of market competition, of competition between carriers, of competition upon the Atlantic seaboard, and of competition at St. Paul. Some of these competitive forces act equally in case of both St. Paul and Mankato. Some apply mostly to St. Paul. In some the defendant is an important factor, and in some it is not concerned.

It is important, however, to notice that the result of all this competition is a normal rate. We have found that this rate from St. Paul to the East is reasonable and just and as high as could properly be applied to the movement of this traffic. It follows, therefore, that it may be used as a standard of comparison with the Mankato rate when proper allow-

ance has been made for the greater competition at St. Paul.

We have found, independently of the St. Paul rate, that the rate on potatoes from Mankato should be less than the Chicago combination, but we have used the rate from St. Paul for the purpose of establishing the amount of the reduction. The above holding applies to this case alone. We express no opinion as to what relation should obtain between St. Paul and Mankato, if through rates were generally published, nor do we hold that a case might not arise in which the defendant could properly make its St. Paul rate without any reference to Mankato.

It has been found that the defendant might and should have established a rate from Mankato to Scranton of 39 cents and to Washington of 38 cents per 100 pounds, applicable to the shipments of the complainant, and that by its failure to do so the complainant has been damaged to the amount of \$73.69. An order should issue directing the payment of this sum with interest from November 1, 1892. It has also been found that the defendant should at the present time put in effect corresponding rates from Mankato to Eastern destinations, but it is difficult to see how in the present state of the law this Commission can make any order which will be effectual in the premises. It can only recommend that this be done.

Unreasonable Rates on Petroleum

Two cases recently decided by the Commission, one entitled *Fred G. Clark Company vs. Lake Shore & Michigan Southern Railway Company et al.*, and the other *Waverly Oil Works vs. Pennsylvania Railroad Company et al.*, involved the refusal of the New York, New Haven & Hartford Railroad Company, hereinafter called the New Haven Company, to make and maintain joint through rates on petroleum and its products from Cleveland, Ohio, Pittsburg, Pa., and other points in Pennsylvania and Ohio, to points reached by the New Haven Company in New England. The decision was prepared by Commissioner Prouty. On all such traffic the New Haven Company insists upon exacting its local charges from junction points with other carriers to the various destinations in New England taking Boston rates. The New Haven Company does participate in through rates to New England points on other traffic generally. Ordinarily the rate to Boston applies to points in Massachusetts and Connecticut, including junction points with the New Haven Company, and it results that its refusal to join in through rates on petroleum and its products operates to increase the rate by the amount of its local charge. The Standard Oil Company brings crude oil by pipe line to its seaboard refineries and sends the refined oil and the products by tank steamers to distributing stations at Wilson Point, Conn., and Indian Point, R. I., and also has distributing stations at New London, Conn., and East Boston, Mass. From the distributing stations this oil and

products are shipped out locally to interior points. Independent shippers, like the complainants, are obliged to send shipments by rail to the same destinations. The Commission in this case reaches the following conclusions:

The combination rates on petroleum and its products from Cleveland and Pittsburg to points reached by the New Haven Company result in unreasonable and unjust rates. The refusal of the New Haven Company to consent to and participate in through rates on that traffic is unjust and unreasonable, and the situation is such as to operate greatly to the advantage of the Standard Oil Company. There is no competitive relation between petroleum and its products on the one hand and other articles of traffic on the other, and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. The act to regulate commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates by connecting carriers, or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief cannot be afforded by the Commission and the complaint must be dismissed.

Concerning Alleged "Pennsylvania Merger"

The Pennsylvania Railroad Company has an authorized capital stock of \$400,000,000, of which \$302,513,300 has been issued and is now outstanding. This company appears to control, and is understood to control, all the lines embraced in the Pennsylvania system, so-called, having an aggregate mileage of 10,999.86 miles and gross earnings for the last year of \$238,172,528. The term Pennsylvania system, as here used, includes the lines of the Pennsylvania Railroad Company, the Pennsylvania Company, the Philadelphia, Baltimore & Washington Railroad Company, and the Northern Central Railway Company, but does not include the Baltimore & Ohio Railroad Company, the Norfolk & Western Railway Company, or the Chesapeake & Ohio Railway Company.

The Pennsylvania Company, which controls all the lines of the Pennsylvania system west of Pittsburg and Erie, has an authorized capital stock of \$80,000,000, of which \$40,000,000 has been issued. All this issued stock is owned by the Pennsylvania Railroad Company.

The Philadelphia, Baltimore & Washington Railroad Company has an authorized capital stock of \$25,350,450, of which \$23,493,550 has been issued and is now outstanding. Of this issued stock the Pennsylvania Railroad Company owns \$23,490,775.

The Northern Central Railway Company has an authorized capital stock of \$20,000,000, of which \$17,193,400 has been issued and is now outstanding. Of this issued stock the Pennsylvania Railroad Company owns \$9,401,950.

The Baltimore & Ohio Railroad Company has an authorized capital of \$60,000,000 of preferred stock and \$125,000,000 of common stock, of which \$59,986,464 of preferred and \$124,272,060 of common have been issued and are now outstanding. Of this issued stock the Pennsylvania Railroad Company owns \$21,480,000 of preferred and \$30,293,300 of common; the Pennsylvania Company owns \$5,000,000 of preferred and \$11,044,600 of common; the Northern Central Railway Company owns \$1,000,000 of preferred and \$781,500 of common; the Philadelphia, Baltimore & Washington Railroad Company owns \$1,000,000 of preferred and \$781,500 of common. It thus appears that the Pennsylvania Railroad Company and three other companies which it controls, own an aggregate of \$28,480,000 of Baltimore & Ohio preferred and \$42,900,000 of Baltimore & Ohio common.

The Norfolk & Western Railway Company has an authorized capital of \$23,000,000 of preferred stock and \$66,000,000 of common stock, all of which has been issued and is now outstanding. Of this issued stock the Pennsylvania Railroad Company owns \$5,500,000 of preferred and \$20,330,000 of common; the Pennsylvania Company owns \$5,000,000 of preferred and \$1,500,000 of common; the Northern Central Railway Company owns \$500,000 of preferred and \$1,000,000 of common. It thus appears that the Pennsylvania Railroad Company and two other companies which it controls own in the aggregate \$11,000,000 of Norfolk & Western preferred and \$22,830,000 of Norfolk & Western common.

The Chesapeake & Ohio Railway Company, with an unlimited authorized capital stock, has issued \$8,200 first preferred, \$800 second preferred, and \$62,790,400 common stock, which is now outstanding. Of this issued common stock the Pennsylvania Railroad Company owns \$10,130,000; the Pennsylvania Company \$4,000,000, and the Northern Central Railway Company, \$1,500,000. It thus appears that the Pennsylvania Railroad Company and two other companies which it controls own in the aggregate \$15,630,000 of the common stock of the Chesapeake & Ohio Railway Company.

As to whether the facts hereinbefore stated show or tend to show a violation of the Act of Congress referred to in the resolution, the Commission expresses no opinion, as it is charged with no duty in connection with that enactment and has no authority to determine a question arising thereunder.

Petition Presented to the Senate

The Vice President has presented to the Senate the petition of the indorsers of the Grosscup Plan for the amendment of the Interstate Commerce Act.

VIRGINIA CORPORATION COMMISSION

Important Features of the Second Annual Report—Questions of Classification Under Advisement—One Volume of Statistics

THE second annual report of the Virginia Corporation Commission, in two volumes, has just been published. The report deals with the formal hearings held by the commission, many of which relate to taxation of corporate properties and the cases brought before the Court of Appeals of the State to determine the status of the commission.

One of the most important matters relates to the charge which may be made by the carrier for weighing cars. The right of the commission to consider the matter was challenged. The commission held that this was a public service, and this view was sustained by the Court of Appeals.

The opinion of the Court of Appeals affirming the rules and regulations known as car service and demurrage rules, is inserted at length. The report states that over 200 letters have been received containing complaints against railroads relating to various matters connected with the public service. The matters in which relief was sought were in regard to lack of sufficient freight and passenger accommodations at various stations, insufficient train schedules, failure to observe demurrage rules and complaints concerning rates between various points on various articles. Where the rates complained of have been interstate rates, the commission "has endeavored to obtain, through mediation, such relief as was practicable."

The commission has under advisement the questions of classifications, and has issued an order upon which it will make a full investigation to ascertain whether or not it is feasible to use a single uniform classification of freight, to be observed by all carriers in that State. In the matter of classification Virginia is unique. East and west roads use official classification, while north and south use Southern classification.

The condition of rights of way, passenger depots and similar matters are included in Volume I, while Volume II is occupied with the statistics relating to carriers operating in that State.

Now It Is the Minister's Turn

President Carroll D. Wright, of Clark College, Worcester, Mass., in a recent lecture on "Efforts Made by States to Regulate Industry," said: "If I am a minister of the Gospel, and I go to a railway ticket office and ask for a ticket at half price and get it, just why should I preach against rebates next Sunday? Ethically, there is no difference between John D. Rockefeller getting discount on the transportation of his oil and the Christian Endeavor Society going to San Francisco for a convention at wholesale rates. We damn the one, and some seem to wish the damning to extend beyond this earth, but we applaud the other for doing the same thing."

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

The Right of Congress to Regulate Rates

To the Editor of Freight:

SIR—It is reported that some of the "wise" (?) Senators are disputing the right of Congress to regulate rates for the transportation of freight. Can you advise me on what they can base this belief?

C. O. KOHN.

EVANSVILLE, Ind., February 16.

We are not authorized to speak for or on behalf of those who urge that the Federal Legislature cannot prescribe the rates to be charged for the transportation of freight. The power of Congress in this behalf is found in Article I, Section 8, of the Constitution of the United States: "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Speaking without any authority for those who hold the view stated by the inquirer, we presume it is based on the following cases: *Gibbons vs. Ogden*, in which the court said that the power to regulate commerce is the power to prescribe the rules by which commerce is to be governed; in *Welton vs. Missouri*, that the power to regulate commerce is to prescribe the rules by which it shall be governed—that is, the condition upon which it shall be conducted; to determine how far it shall be free and untrammelled, how far it shall be burdened by imposts, and how far it shall be prohibited; commerce is trade, intercourse; and in *Henderson vs. Wickham* the Supreme Court said: "To regulate this trade and intercourse is to prescribe the rules by which it shall be conducted." In the *Northern Securities* case, Mr. Justice Harlan, referring to rates for the transportation of goods, said: "If Congress has the power to fix such rates—and upon that question we express no opinion—it does not choose to exercise its power in that way and to that extent."

If there be a difference between prescribing a rule and stating directly or indirectly a specific amount in currency as the rate for transportation of commodities, there may be something in the contention of these so-called "wise men." To our mind their case is not proven. We hope we do them no injustice in assuming their argument, for we are not of their councils.—[Ed.]

Limitation of Liability

To the Editor of Freight:

SIR—The Adams Express Company recently delivered us a bale of dress goods weighing 140 pounds and collected thereon charges at the rate of \$1.50 per 100 pounds. The goods were wet on one end and we entered a claim for 40 cents per yard damage, and as there were 202½ yards in all, the claim amounted to over \$80. The total value of the goods was \$309.55, and they refused to allow us more than \$50 on our claim, stating that they were not liable for more than

that amount because the value had not been declared on the shipment when made. Are they not liable for the full amount of the claim, and can we not collect for the full value of a package lost, even though the value is not declared? If the value is declared they would collect 10 cents per every \$100 or fraction thereof on every package valued over \$50.

In replying please address our Receiving Department.

Yours truly,

JOSEPH HORNE COMPANY.

PITTSBURG, Pa., January 24, 1906.

Assuming that the shipper assented to the limitation of liability by the express company, or what is tantamount thereto in certain States—namely, the acceptance without protest of the receipt, in which the limitation of the liability is stated—the law on this point is not definitely settled, in that it is not uniform. There are certain States which would give to the consignee the full amount of the claim, and in others this relief would be denied. The weight of authority is that an express company may by an express contract limit the amount of its liability for the amount of the loss or damage to goods if the true value is not disclosed, and the loss or damage may be occasioned by its common or ordinary negligence. Cases sustaining this view are:

Muser vs. Holland, 17 Blatchf. (U. S.) 412; *Oppeheimer vs. U. S. Express Co.*, 69 Ill. 62; *Pacific Express Co. vs. Foley*, 46 Kan. 457; commenting upon *Kallman vs. U. S. Express Co.*, 3 Kan. 205; *Magnin vs. Dinsmore*, 70 N. Y. 410; *Belger vs. Dinsmore*, 51 N. Y. 166; *Westcott vs. Fargo*, 61 N. Y. 542; *Ballou vs. Earle*, 17 R. I. 441; *Hart vs. Pennsylvania R. Co.*, 112 U. S. 331; *Earnest vs. Southern Express Co.*, 1 Woods (U. S.) 573.

The contrary view is taken in other States and particularly in Pennsylvania. Cases are:

Galt vs. Adams Express Co., MacArthur & M. (D. C.) 124; *Southern Express Co. vs. Seide*, 67 Miss. 609; *U. S. Express Co. vs. Backman*, 28 Ohio St. 144; *Grogan vs. Adams Express Co.*, 114 Pa. St. 523; *Adams Express Co. vs. Holmes* (Pa. 1887); *Overland Mail, etc., Co. vs. Carroll*, 7 Colo. 43; *Southern Express Co. vs. Moon*, 39 Miss. 822; *Pittsburg, etc., R. Co. vs. Sheppard*, 56 Ohio St. 68.

The remedy, therefore, to which you are entitled is dependent upon the State in which suit is brought. If suit be brought in Pennsylvania, it is likely that recovery could be had by you. If, however, suit be brought in Illinois, the law is different, and you would probably lose the suit.

The point of shipment would have some effect upon the shipping receipt, for in certain States carriers are prohibited from limiting their liability. In others, however, this prohibition does not exist, and in others still the prohibition is a modified one.—[Ed.]

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

CARRIER NOT AN INSURER OF GOODS

Three carloads of evaporated apples were shipped to the consignee and were in transit from four to seven days. Upon arrival at destination notice was given the consignee, which was received by mail in due course. This was in October, 1901. The consignee did not claim the property until some time in the month of January following; the goods, however, were examined at the time of arrival and were found to be damaged, slightly fermented and had commenced to turn in color. Suit was brought to recover the value of the apples. The court held that the carrier was not an insurer of the goods after notification of the arrival, but that it was under duty to exercise ordinary care of the property. It also held that the consignee was guilty of contributory negligence in not calling earlier for the goods. The court in this case said:

The defendant was not liable as common carrier to the plaintiffs in this case for the damages sustained by them. In fact, it is practically conceded by the respondents that such liability does not exist. As stated by the referee in an opinion:

"They [the plaintiffs] concede that the transportation was perfectly made from Staunton to Jersey City, and that the liability of the defendant as common carrier ceased upon its notifying the plaintiffs of the arrival of the shipments at destination. They seek to recover solely on the liability of the defendant as a warehouseman."

It is well settled, as stated by the learned referee, that after the lapse of a reasonable time for the consignee to remove the goods after he is given notice of their arrival at their destination, the liability of the common carrier as such ceases, and if it is responsible thereafter it is as a warehouseman. *Tarbell vs. Royal Exch. Shipping Co.*, 110 N. Y. 170. In that case the court (page 180, of 110 N. Y.) said:

"But a delivery which will discharge the carrier may be constructive and not actual. To constitute a constructive delivery, the carrier must, if practicable, give notice to the consignee of the arrival, and when this has been done, and the goods are discharged in the usual and proper place, and reasonable opportunity afforded to the consignee to remove them, the liability of the common carrier, as such, terminates. The duty of the consignee to receive the goods is as imperative as the duty of the carrier to deliver. Both obligations are to be reasonably construed, having reference to the circumstances. The stringent liability of the carrier cannot be continued at the option or to suit the convenience of the consignee. The consignee is bound to act promptly in taking the goods, and if he fails to do so, whatever other duty may rest upon the carrier in respect to the goods, his liability as insurer is by such failure terminated. *Redmond vs. Liverpool Co.*, 46 N. Y. 578, 7 Am. Rep. 390; *Hedges vs. Hudson River R. Co.*, 49 N. Y. 223."

The common carrier, however, does not necessarily relieve himself from all liability by giving timely notice to the consignee of the arrival of the goods, even although he fails to remove them within a reasonable time. "If the consignee neglect to accept or to receive the goods, the carrier is not thereby justified in abandoning them, or in negligently exposing them to injury. If they are not accepted and received when notice is given of their arrival, he may relieve himself from responsibility by placing the goods in a warehouse for

and on account of the consignee; but so long as he has the custody, a duty devolves upon him to take care of the property and preserve it from injury. *Scheu vs. Benedict*, 116 N. Y. 510, and cases cited. If the goods had been stolen while in defendant's custody because of its negligence, clearly it would have been liable. *Tarbell vs. Royal Exch. Shipping Co.*, supra. If the property had been destroyed by fire through defendant's negligence, notwithstanding it owed no duty in respect to them as common carrier, it would likewise have been liable. *Draper vs. D. & H. C. Co.*, 118 N. Y. 118. Under all the authorities, if, after the defendant had fully discharged its duty as common carrier, it negligently suffered plaintiffs' goods to be damaged or injured, it would be liable. So that the question arises, does the evidence tend to establish negligence on the part of the defendant? What did it do or omit in the premises that would not have been done or omitted by a person of ordinary care and prudence? Was it negligent because it failed to unload the apples from the cars onto the pier within 10, 13, or 57 days after it had notified the plaintiffs of their arrival? There is no evidence tending to show that it was the custom of the defendant, or of any other railroad company, to so unload such goods under like circumstances. It had a right to expect from day to day that the plaintiffs would remove the same, or give instructions respecting them. A provision of the bill of lading which constituted the contract of shipment between the parties provided:

"Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination may be kept in car, vessel, depot, or place of delivery of the carrier at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost, and there held subject to lien for all freight and other charges."

With such provision in the contract of shipment, we think the defendant was not negligent in omitting to unload the cars in question. Again, there is no evidence which shows or tends to show that the defendant knew, or in the exercise of reasonable diligence ought to have known, that the apples would have been in better condition if taken from the cars and placed in piles upon the pier. The fact that the goods were evaporated apples, and were semi-perishable, in no manner tended to establish the fact. But again, the plaintiffs knew that by the terms of their shipping contract the property "may be kept in the car" at their sole risk after being notified of its arrival, and therefore it must be presumed they knew the apples would be so "kept in the car" unless the defendant was otherwise instructed. *Becker vs. P. R. R. Co.*, 96 N. Y. Supp. 1.

IMPORTANT DECISIONS IN BRIEF

A consignee is not required to accept a tender of goods which have been held by the carrier where it permitted them to remain in a storehouse for nearly a year, the box containing the goods having been broken into and many of the articles defaced, damaged and some of them destroyed. *C. N. O. & T. P. Ry. Co. vs. Stout*, 90 S. W. 258.

Where it has been shown that live stock was injured in transit there is a burden upon the carrier to produce evidence to free itself from blame. And, under a statute providing that no contract for transportation shall exempt the common carrier from its liability, and a contract has been entered into by which the carrier's liability is limited by providing that the owner assumes the risk of expense for feeding, watering and bedding, etc., and that the carrier shall not

be liable for loss or damage arising from heat, suffocation, crowding, etc., was held to be in violation of the statute and the carrier was held liable. *Powers vs. C. R. I. & P. Ry. Co.*, 145 N. W. 345.

That an express company may limit its liability, having given notice to the owner of the property to be transported, such notice containing reasonable and suitable restrictions, was held in the case of *Gerry vs. American Express Company*. The court said:

"It is well settled that a common carrier may limit his responsibility for property intrusted to him by a notice containing reasonable and suitable restrictions, if brought home to the owner of goods delivered for transportation, and assented to clearly and unequivocally by him," and if it appears "that the terms on which the carrier proposed to carry the goods were adopted as the contract between the parties, according to which the service of the carrier was to be rendered." *Fillebrown vs. Grand Trunk Ry. Co.*, 55 Me. 468, 92 Am. Dec. 606.

"The receipt in this case in express terms incorporated into it the limitation of liability contained in the conditions printed in the book of receipts used by plaintiffs. Upon that receipt and under its conditions defendant received the goods, and upon it plaintiff delivered them. That constituted the contract between the parties, and, in the absence of fraud or misrepresentation, which are not claimed, the plaintiffs are bound by its expressed terms. They cannot be permitted to say that, by their own inattention, they did not read the terms and conditions, and thereby impose upon defendant greater liability than that expressed in the contract." *Squire vs. New York Cent. R. Co.*, 98 Mass. 239, 93 Am. Dec. 162, 62 Atlantic 498.

Where one sued a final carrier for damages caused by failure to deliver cattle upon arrival at destination, carrier having demanded additional freight in excess of the rate agreed upon by the initial carrier, it was held that the agents of the initial carrier acted for the final carrier, it being shown that they acted only after conferring with them. It was held, also, that the carrier is bound to feed and water live stock and that the shipper is not under duty to do so, especially where the stock is unlawfully held at destination by the carrier. *So. Kan. Ry. Co. vs. J. W. Burgess*, 90 S. W. 189.

The Court of Civil Appeals of Texas has affirmed the doctrine laid down by the Supreme Court of Alabama in the *Dismukes* case, where a shipper contracted for the transportation of property at less than the published rates. The Supreme Court of Alabama in that case said:

"There is nothing in the law which forbids shippers to contract for transportation at other rates than those specified in these schedules. It is only when the shipper knowingly contracts for a rate differing from that therein prescribed that his act is denounced as unlawful and punished as a crime. The motive of this legislation, moreover, is the protection of persons dealing with common carriers. Its primary purpose is to prevent a resort on the part of carriers to the undue advantages which accrue to them from the circumstances of their relations to persons having need of their services. The provision of the law should not be so strained or contorted as to defeat its purposes, and convert the shield it was intended to afford the unwary shipper, who has no choice but to patronize the carrier, into a sword with which to work his destruction more certainly and completely than would have been possible had not the arm of the Government been put forth in his behalf." 90 S. W. 190.

Suit was brought to recover freight on timber shipped according to the bill of lading from Port Arthur, Tex., to London. The bill of lading stated that the timber was "shipped in good order and condition" and that the "quality

and measure" were unknown, and further, that the shipment was to be subject to the provisions of the Harter Act. Upon arrival it was found that the timber was seriously damaged, which fact had been noticed when the timber was shipped. The suit was by the indorsers of the bill of lading against the ship owners. It was held that the statement in the bill of lading that the timber was "shipped in good order and condition" was not neutralized by the statement that the "quality and measure" were unknown, and further, that the contract was one to deliver the goods in the same condition in which they were shipped, coupled with the acknowledgment that the condition was good at the time of shipment. It was further held that the master of the vessel had authority to state and stated in the bill of lading that the goods had been shipped in good order and condition, the ship owners were bound and were estopped to deny as to the innocent indorsees of the bill of lading the good condition of the shipment. In *Compania Naviera Vascongada vs. Churchill and Sim-Compania Naviera Vascongada vs. Burton & Co.*, 22 T. L. R. 85.

The law concerning the right of a carrier to limit its liability in a bill of lading, even though the shipper does not know the contents of the document, was stated by the Supreme Court of Florida as follows:

"The rule is quite generally settled in the United States that an acceptance by a shipper or his agent of a receipt or bill of lading containing a limitation of the carrier's liability is binding on him, when the limitation is not illegal or unreasonable; that it is not essential to the validity of such a limitation that it be shown that the shipper was aware of it, or that he had read it, or that it had been explained to him, or his attention called to it, provided the carrier made use of no improper means to prevent his noticing or objecting to it; and that every shipper is conclusively presumed, in such a case, to have read and assented to the provisions of the receipt or bill of lading given him, whether he in fact assented or not. 5 Am. & Eng. Ency. Law (2d Ed.) pp. 293, 294, and numerous authorities there cited. The stock contract or bill of lading here inquired about had been admittedly received by the shipping plaintiffs, had been accepted and signed by their shipping agent, the Brady Union Stock Yards, and the plaintiff had admittedly received and ridden upon a free pass issued to him by the railroad company as a part of the contract of shipment, and no obstacles were shown to have been thrown in his way to prevent his fully familiarizing himself with the terms of the contract and each and every of its conditions. Under these circumstances it made no difference whether the plaintiffs ever expressly assented to the contract or not, or even read or knew of its terms and conditions. They are fully bound thereby, and are estopped from gainsaying or repudiating it." *Atlantic Coast Line R. Co. vs. Dexter*, 39 So. 634.

Where a railroad company directs a drayman to use a private crossing, whereon it has placed a car for unloading, it is under duty to keep the crossing in reasonable repair, and failure so to do will make the carrier responsible for injury, even though the drayman knew there was a danger attending its use. *Cowans vs. Ft. W. & D. City Ry. Co.*, 89 S. W. 1116.

Where a sleeping passenger is not aroused at destination by employes of the carrier, his failure to leave the train immediately does not terminate the relation of the passenger and the carrier's duties to him are the same as to any other passenger. (*Bass vs. C., C. & St. L. Ry Co.*, 105 N. W. 151.)

Where a passenger without justification was ejected from a train, it was held that punitive damages could be recovered. (*Seaboard Air Line vs. O'Quin*, 52 S. E. 427.)

HEARINGS AND RULINGS BY STATE COMMISSIONS

ALABAMA

On March 20 the Alabama Railroad Commission will begin a general inspection tour of the Southern railway lines. Birmingham will be the starting point, and General Manager Spencer will accompany the commission. Numerous complaints before the commission urge material improvements in the line lying in Alabama between Mobile and Marion Junction.

New local rates on cotton have been approved by the commission. All are reductions and apply on the Memphis Division of the Southern Railway. The reductions place the cotton rates on the same level with those of all other lines of the same road in Alabama.

The next meeting of the commission will be held March 7.

GEORGIA

On March 7 the Georgia, Southern & Florida and the Atlantic & Birmingham must show cause to the commission why they should not be advanced in class. This hearing is not on the petition of any complainants, but is at the instance of the commission itself. At present the Georgia, Southern & Florida is in Class C and the Atlantic & Birmingham in Class D.

A. C. Howard, of Doerum, Colquitt County, asks the Railroad Commission for lower rates on spring beds. Mr. Howard says that spring beds and bed springs are now in Class 1, where the highest rate of freight is charged, whereas they constitute a class of freight that is almost indestructible.

ILLINOIS

The Illinois Railroad and Warehouse Commission is examining the tables of comparative freight rates which it recently caused to be made. Governor Deneen will also examine the comparisons and then the railroad men will be extended an invitation to come to Springfield to present argument on the pending motion to reopen the case relative to classes 6 to 10, inclusive.

IOWA

The Railroad Commission reduced rates on nearly forty important articles and has other rates under consideration for reduction. One of the most important benefits to a Des Moines industry is the reduction of the rates in sand in bulk from 15 to 25 per cent. Among the articles affected by the reduction are toilet soap, iron pumps, paraffine wax, caskets, buttons, grain and seed cleaners and separators, woven wire refrigerator shelves, farm scales, agricultural implements, cotton piece goods, shale and horse collars.

KENTUCKY

The Railroad Commission has ordered "that the Louisville & Atlantic Railroad Company and the Louisville & Nashville Railroad Company shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load and unload all freight in carload lots or less quantities coming to or going from either of said railroads or any other railroad in the city of Richmond, Ky., with equal promptness and dispatch and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignors in any matter as to payment, transportation, handling or delivery, and shall so receive, deliver, transfer and transport all freight as

above set forth from and to any point where there is a physical connection between the tracks of said companies in the city of Richmond, Ky., for which said companies may charge \$2 per car for carload lots, and no more.

W. A. Massie, of Jericho, Ky., has filed a bill showing that he shipped a cow in car No. 19,995 on the Prospect line of the Louisville Railway Company to the Bourbon Stock Yards, a distance of 7 miles, and that a charge of \$7 was made for transportation. For lottage, a fee of 20 cents was exacted, and for carrying refreshments, in the form of hay, 15 cents.

Another complaint just filed with the commission is that of Wells & Co., of Taylorsville. The firm claims that a car of wire, shipped to the company from Adrian, Mich., was billed at 16 cents per hundred, but after the car was handled between Louisville and Taylorsville by the Louisville & Nashville Railroad Company a charge of 17 cents was made.

The management of Central Asylum for the Insane, at Lakeland, has filed charges against the Louisville & Nashville Railroad Company to the effect that exorbitant freight rates are charged by that line, especially on coal.

LOUISIANA

The Railroad Commission granted a hearing on February 21 on the proposed rule that no telephone company operating in Louisiana shall hereafter be allowed to connect more than five telephones on any party lines. Decision was reserved.

The Texas & Pacific has brought suit to prevent the Railroad Commission from putting into effect its rates on cotton seed and cotton seed products. Attorney General Guion will defend the commission, and if it is sustained by the court, the rate will be put into effect on all the roads in Louisiana.

MINNESOTA

The Railroad Commission is trying to arrive at a basis for regulating freight rates by making a valuation of railroad properties and calculating what would be a reasonable revenue on the investment.

MISSOURI

George H. Crosby, freight traffic manager of the Burlington, and George L. Thomas, a New York freight broker, have demurred to the indictments returned against them by the Federal Grand Jury of Kansas City, the latter for receiving and the former for paying rebates. The case will come up in Kansas City in April.

RHODE ISLAND

Despite the ruling of the Interstate Commerce Commission, which ordered the New York, New Haven & Hartford Railroad Company to deliver the freight cars of D. W. Miner, of Providence, to what is known as the Canal street freight yard in that city instead of the so-called West yard, Miner's cars are not being delivered there. The railroad company has taken the unusual action of declining to comply with the order of the Commission. The contention of the railroad is that the Canal street yard is already overcrowded. Mr. Miner says he intends to continue the fight, believing himself to be a victim of unjust discrimination.

TEXAS

The Railroad Commission on February 13 issued an order reducing the freight rates on lumber between points in this State about 7½ per cent. Railroad Commissioner O. B. Colquitt dissented from the majority of the commission. In a published interview he severely criticised his associates for not adopting his views and ordering a more radical reduction of the rates. Railroad Commissioner Allison Mayfield authorized the statement that he considered Mr. Colquitt's interview an insult to the commission and too contemptible for an answer.

The commission has compiled statistics to determine what per cent. of the freight traffic by railroads in Texas is intrastate and which is interstate, and has discovered that 59 per cent. is interstate traffic.

The several Texas railroads which filed proceedings in the Federal Court here a few months ago to enjoin the Railroad Commission from the enforcement of its order establishing emergency rates on dry goods, boots and shoes, etc., have refused to dismiss the case, notwithstanding the fact that the commission has canceled the emergency order in question. The railroads want the constitutionality of the law which gives the commission authority to establish emergency freight rates determined by the court. The case is set for trial March 5.

WASHINGTON

It is stated that the Railroad Commission will not at present order any change in the joint rates on wheat from Eastern Washington points to the Sound unless the O. R. & N. has ample opportunity to consider the change.

WEST VIRGINIA

Governor Dawson is being urged to call a special session of the Legislature to consider the railroad rate problem. Should such a session be called, it will probably result in the establishment of a railroad commission.

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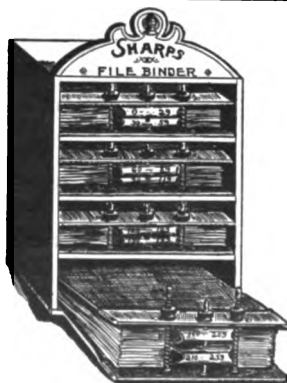
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PERSONAL MENTION.

BATTERS.—Frank E. Batters has been appointed general agent of the Southern Steamship Company at New Orleans, La.

BAYLESS.—S. O. Bayless, formerly assistant general counsel of the Big Four, has terminated his connection with that road and has opened an office in Cincinnati for the general practice of law.

BLAIR.—Egbert Blair has been appointed traveling freight agent of the Wabash.

JONES.—H. A. Jones, traffic manager of the Southern Pacific, now has jurisdiction over the Houston & Texas Central, the Houston, East & West Texas and the Houston & Shreveport railway companies.

MALLARD.—Charles C. Mallard has been promoted to be superintendent of Gila Valley, Globe & Montana Railway Company, with headquarters at Gila, Ariz.

MCCARRICK.—J. D. McCarrick has been made commercial agent of the Southern Railway at Norfolk, Va.

PENNELL.—W. G. Pennell has assumed his duties as division freight agent of the Big Four Railroad at Louisville, Ky.

PENNSYLVANIA.—The board of directors of the Pennsylvania Railroad have amended the organization, so far as the conduct of the freight business is concerned, by providing for two general freight agents, one to be in charge of through freight traffic and the other of local freight traffic. E. C. Bates, the present general freight agent, was given the first-named position, and Robert C. Wright, the present assistant general freight agent, was promoted to the other. George D. Ogden, division freight agent of the Buffalo & Allegheny Valley, at Pittsburg, was promoted to succeed Mr. Wright, and Mr. Ogden's position was filled by the appointment of H. C. Clevenger, at present general freight agent of the Cumberland Valley, at Harrisburg.

POTTS.—R. L. Potts succeeds Mr. McCarrick as soliciting agent at Norfolk, Va.

READING.—John Reading has been made freight agent of the Wabash at Buffalo, N. Y.

Quaker Manufacturing Company

The Quaker Manufacturing Company has moved its general offices to Suite 211, No. 40 Dearborn street, Chicago, where the president of the company, M. Austin, will spend most of his time. The factory at Chicago Heights will be in charge of Charles E. Wallace. The business of the company in furnaces and fittings has increased 400 per cent. in two years.

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TRANSPORTATION TOPICS THROUGHOUT THE STATES

ARKANSAS

It is announced that the Armour Refrigerator Company will make no contracts with the Frisco and will withdraw all their refrigerator cars from service on that road. Rock Island refrigerator cars will be used instead.

ALABAMA

The business men of Selma have started a movement for the purpose of obtaining cheaper freight rates. A recent meeting was addressed by E. C. Melvin, vice president of the Commercial and Industrial Association of Selma, and also by W. V. Vandiver, N. Lobman and T. H. Levis, of the Montgomery Freight Bureau.

Louisville & Nashville has reduced rates on a number of articles from Nashville to Birmingham, and common points based on Birmingham, from 8 to 15 per cent. The most important items are articles of building hardware, mining supplies, packing house products, paints, putties, varnishes and linseed oil. By the reduction Nashville jobbers and manufacturers retain an advantage in this territory.

United States Customs Collector William F. Tebbetts, of Mobile, reports that the value of goods shipped from and to that port during 1905 exceed \$25,000,000. During the year 244 sailing vessels and 612 steamships entered the port and 195 sailing vessels and 578 steamships cleared for other ports. Cuban steamships to the number of 46, comprising 54,808 tons entered, while 45 vessels cleared with a tonnage of 56,264.

The Maritime Exchange and Shippers' Association of Mobile has been organized with the following officers:

President, J. B. Watterman; first vice president, J. T. McKeon; second vice president, W. F. Tebbetts; chairman of committee on customs and abuses, Robert Hunter; chairman of committee on underwriters, Harry Pillans; chairman of committee on arbitration, H. G. McClure; chairman of committee on legislation, James Gibboney.

A movement is on foot to establish a new line of steamers from Mobile to Central American points, touching at Colon, thence to Bluefields, Bocas del Toro, Limon and Greytown. R. K. Warren is interested in the enterprise.

CALIFORNIA

At a conference between J. S. Leeds, of the Santa Fé, and Robert Graham, of the Armour refrigerating service in San Francisco, a reduction of rates on deciduous fruits from California points to the Eastern markets was agreed upon. From Sacramento and Antioch to Chicago a reduction of \$10 a car was made, and the rates from the California points to New York is now \$17.50 less. It was agreed no rebates or other special concessions shall be granted to any fruit shipper in California.

The Building Trades Council of Alameda has adopted resolutions favoring the building of the Western Pacific Railroad, the new Gould project.

Southern Pacific has begun construction on new freight yards at Gilroy, practically doubling the present capacity.

Lieutenant Governor Alden Anderson thinks the action of the railroads in reducing rates on deciduous fruits to New York and Chicago markets has for its purpose the equalizing of present rates

from the San Joaquin Valley and other points in California in order to meet the terms of the San Pedro, which has become a decided factor in the business.

CONNECTICUT

It is announced that the New Haven roads of boats for the New York and Boston freight route going around Cape Cod will cost \$1,000,000 each.

The entire freight department of the N. Y., N. H. & H. R. R. in Hartford has been moved to the new freight house and offices on Morgan street.

The new freight yards of Plainville, rapidly nearing completion, will occupy about 25 acres.

The New Haven road at Bridgeport has notified all towing and water transportation lines that it cannot grant wharfage privileges at the docks of the company, between Union street and the steamboat wharf at South avenue, for any class of service, either light or loaded; whether storm bound or consigned to Bridgeport parties. The company is erecting steam freight facilities on the docks and the work is of such character as to necessitate the sole occupancy of the docks by the contractor.

FLORIDA

The first steamship of the new Southern Steamship Company's line, plying between Philadelphia, Mayport, Tampa and Key West, arrived at Mayport February 3. Jacksonville will be made a port of call by the new line.

Twenty miles of track are to be put in the new terminals at Jacksonville. Every freight train leaving the city and all freight coming to Jacksonville by rail will be received and handled there.

Pensacola export shipments eclipsed all previous records in January, aggregating \$3,207,385, more than \$1,000,000 in excess of any previous month in the history of the port.

GEORGIA

Gainesville coal dealers have this problem before them: The rate per ton from one point to Atlanta is \$1.30. The rate from Atlanta to Gainesville is 40 cents; a total of \$1.80. From another point to Atlanta is \$1.40; the rate to Gainesville added, 40 cents, is \$1.80. So far, so good. Lately from another point to Atlanta the rate is \$1.15. But the total rate to Gainesville is \$1.70—or a difference of 55 cents from Atlanta to Gainesville. The dealers want to know why the discrepancy.

Brunswick lumber merchants and cross-tie dealers have retained Judge Spencer R. Atkinson to fight the new rule of the railroads, allowing only forty-eight hours in which to discharge loaded cars, where the time previously was five days. Judge Atkinson has taken the matter before the Railroad Commission.

The Southern Railway has placed an order for forty locomotives, to cost about \$750,000.

ILLINOIS

The Illinois Central announces that it is now carrying nearly every pound of its fruit in its own refrigerator cars. It now has about 3,000 refrigerator cars in service.

The Wabash built a freight depot covering one block in Chicago in less than two months.

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INDIANA

It is reported that the United States Steel Corporation is back of the building of the Chicago, Indianapolis & Evansville road. The Steel Corporation, by building this road, would obtain great advantage in the way of getting coal to its plant at Tolleston, Ind. Train service on the Indianapolis Southern road, which will be operated by the Illinois Central, will begin April 1st.

There have been several meetings in Indianapolis between freight agents and freight committees for the purpose of devising some means of moving cars through the city more expeditiously and improving the switching service.

The interurban lines of Indiana and Ohio, now operating under one head, are making a systematic campaign for freight business.

For the first time in the history of railroads in this country a steam road has granted to a competing electric line the free right to use its track in crossing another steam road, and the State Railroad Commission has set the seal of approval on the arrangement, which, as Union B. Hunt, the head of the commission, says, is one entirely new to railroading.

The reason for the peculiar stand taken by the Big Four in allowing the electric line to use its tracks is that the Baltimore & Ohio has shown a disposition to be hostile to the idea of the electric line crossing the Baltimore & Ohio tracks at Milford Junction.

INDIAN TERRITORY

A readjustment of freight rates from Tulsa and other territory points has been made as the result of a conference between the local traffic bureau and Santa Fé officials.

IOWA

The following is a comparison of the freight rates as fixed by the Iowa and Illinois commissions:

First Class Freight.	Iowa.	Illinois.
Fifty miles	.20	23.31
Seventy-five miles	.22	27.07
One hundred miles	.24	30.00
Fifth Class Freight.	Iowa.	Illinois.
Fifty miles	7.00	9.02
Seventy-five miles	7.07	10.53
One hundred miles	8.4	12.03

Davenport has been placed on the same basis as Rock Island in local freight rates on the Rock Island road.

KANSAS

An effort is being made to change the name of the Civic League, recently organized at Wichita for the purpose of obtaining reduced freight rates to all shippers. It appears that there already exists in Cowley County an organization called the Civic League, and C. T. Franks, one of the organizers of the Freight Rate Civic League, thinks its name should be changed to avoid confusion. He has suggested that it be called the "Square Deal" League, and adds:

"We don't want people to think that it is an organization having for its object the enforcement of the prohibitory liquor law. I know there are lots of good people who occasionally come to town and take their drink; if they thought this organization was in any way connected with the local civic league they would have nothing to do with it. We want to get all the farmers interested in this movement for the reduction of freight rates. If the committee does not change the name of the organization we can change ours locally, anyway, so that all the farmers and

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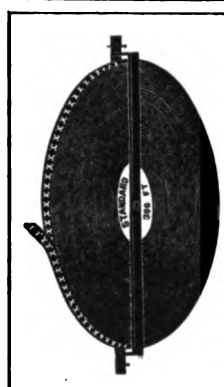
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KENTUCKY

The Big Four has secured the land on Main street between Preston and Floyd, in Louisville, for the erection of a large freight depot.

About the middle of February the Louisville & Nashville, the Big Four and the Chesapeake & Ohio set a 48-hour embargo on all freight except perishable goods and live stock out of Louisville. The action was made necessary by the pressure of tonnage, a car shortage and a congestion in the freight sheds due to bad roads, teamsters having been unable to make quick transference of merchandise.

LOUISIANA

Three new steamships are under construction by the Southern Pacific Company and will be in commission between New York and New Orleans and New Orleans and Havana by December 1. The new ships will be christened The Creole, Momus and Antilles.

It is again reported that the M. K. & T. is making arrangements to enter New Orleans within the present year.

The manufacturing interests at Crowley have complained to the State Railroad Commission of inability to get sufficient cars. The matter is more serious than it has been before in years.

It is expected that the late conference in Chicago, which included roads in the Southeastern Mississippi Valley Freight Association and the Central Freight and Trunk Line Associations will result in a general revision of tariffs from all points in the central part of the United States on business through the ports of New Orleans, Galveston and Mobile. It is believed that the new rates will greatly benefit export business through the ports named.

Seventy-four vessels, bound for many different ports, cleared from New Orleans during January with 7,500,000 bushels of grain.

New Orleans local grain merchants are much exercised at the action of the Illinois Central Railroad in leasing elevator E at the Stuyvesant Docks to the Rosenbaum Grain Company, of Chicago, thus preventing the local men from competing in the export business under existing conditions. The matter is to be laid before the Interstate Commerce Commission.

MAINE

Employees of the freight and yard department of the Boston & Maine at Portland have received an increase in wages amounting to about 25 cents a day. Boston & Maine has also adopted the mileage system for the payment of train crews of freights.

MARYLAND

Baltimore stockholders of the Pennsylvania Railroad Company are being urged not to sign the blank proxies sent out by the company for the annual election of officers at the stockholders' meeting, to be held in Philadelphia, March 27. These aggressive interests want the stock represented with an idea of obtaining the following ends: 1. To induce Mr. Cassatt's management to restore Baltimore to the map of the Pennsylvania system. 2. To bring to the attention of the management the gross inadequacy of the passenger and freight terminals in this city. 3. To secure an abatement of the smoke nuisance in the tunnels and in the district between Calvert Station and the North avenue bridge.

Relations between the various asso-

ciations and officials of the city of Baltimore and the Pennsylvania Railroad seem to be reaching an acute tension. The embargo placed on grain to Baltimore by the Pennsylvania on February 3 was raised on February 12, and the general demand for increased facilities and particularly for the new Union Station continues. General Manager Atterbury states that plans are now being developed for a Baltimore passenger station and the draughtsmen have been at work for months on the details. George C. Wilkens, formerly general agent of the Pennsylvania at Baltimore, says a belt line, which would cost \$12,000,000, must be built first and that there can be no improvement at Union Station until the freight line around the city is built and in operation.

There is talk at Annapolis of creating a State Board of Railroad Commissioners.

MASSACHUSETTS

During January, 1905, twenty steamers left here for European ports direct, and seven steamers via other American ports. The grain shipped on them was 122,307 bushels of wheat, 1,290,086 bushels of corn, 2,344 bushels of oats and 17,159 bushels of barley, a total of 1,431,896, or 632,168 bushels less than January of this year.

It is stated that because Boston is the Canadian Pacific Railway winter port, commercial Boston stands to gain by rapid and complete settlement of the Canadian prairie West. Hence it is good tidings for Boston that the emigration of farmers from the United States prairie West to that of Canada continues. It is expected to include at least 60,000 souls for the current year.

Boston merchants are complaining bitterly that the slow freight service between that city and points in Connecticut, New York and Pennsylvania have begun to act as a basis for discrimination against Boston trade and in favor of New York and Philadelphia. Early in February there was a conference between the Boston Merchants' Association, the Associated and State Boards of Trade and the New England Shoe and Leather Association. A committee will report a plan for remedial action.

A bill before the Legislature seeks to prevent for ten years the laying of freight tracks desired by the National Dock Trust in East Boston streets.

MICHIGAN

All through traffic on the Grand Trunk is to be diverted to Detroit instead of Port Huron, and the line from Detroit to Durand is to be double tracked this spring. The St. Clair tunnel has proven too small to take care of the traffic.

NEW JERSEY

The Trenton Merchants' Association have petitioned President Cassatt of the Pennsylvania Railroad to build the new freight station of the company on a site north of State and Perry streets and thus relieve the congestion of the traffic.

Rumors are still heard at Trenton of a bill giving trolley companies the right to carry freight.

NEW YORK

President Peters, of the Long Island Railroad, says the various improvements in Brooklyn and Queens will cost about \$100,000,000.

Assemblyman Young has introduced a bill at Albany which creates a local railroad commission vested with absolute control of traction companies in New York city. It does not, however,

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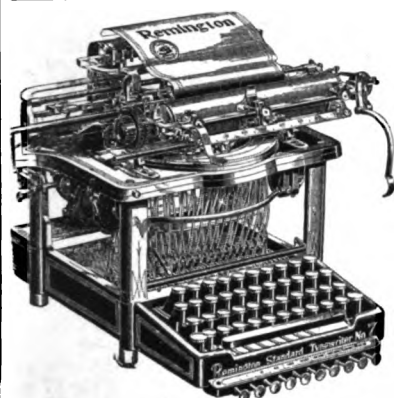
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interfere with the powers of the present Rapid Transit Commission.

The Chamber of Commerce is investigating the charge of discrimination in New York freight rates as compared with other seaboard cities.

Much interest has been aroused in the report that E. H. Harriman and those with him mean to establish great terminal shipping stations at Jamaica Bay.

NORTH CAROLINA

Wilmington merchants are clamorous for more spur track facilities and ask for relief from congestion of freights on the wharf track throughout the wholesale district and to several industrial plants in the southern part of the city.

Trucking interests are decidedly opposed to a bill which has been introduced in the Virginia General Assembly prohibiting freight trains from passing through the State of Virginia on Sunday. Such a bill, if it became a law, would mean the loss of many thousands of dollars to North Carolina.

The North Carolina Pine Association, including the organized lumber interests of the two Carolinas, Virginia and Maryland, will hold a convention in Norfolk, May 14 and 15. Prices on lumber have been advanced on some grades as high as \$5 per thousand. The average advance is about \$1 per thousand.

OHIO

The Pennsylvania Railroad has planned to spend \$4,000,000 in establishing docks at Cleveland, on Lake Erie, for the accommodation of lake freight, ore and coal. The Government will expend thousands of dollars to dredge the lake near the shore so that the largest vessels can enter.

It is believed that the Woertz bill to establish a State Railroad Commission will pass both houses.

President Eugene Zimmerman recently had a conference with officials at Springfield about the proposed belt line and increased local freight facilities. No steps will be taken until the Big Four engineers finish their surveys.

The car shortage at Cincinnati seems very little improved.

The Toledo, Port Clinton & Lakeside Electric Line begins handling freight out of Toledo March 1.

OKLAHOMA

There is a scarcity of stock cars on the 'Frisco, owing to the recent heavy rush to market. Cattle generally in the pan-handle country are in exceptionally good condition.

OREGON

It is stated that the necessary financial support has been secured to establish a steamship line between Portland and Alaska. Business men of Portland will guarantee a certain amount of freight and passenger business for the first year, and after that the company will shift for itself.

PENNSYLVANIA

The House has adopted a resolution calling upon the Governor to reconvene the Legislature at the close of the extra session, for the passage of legislation permitting trolley companies to carry freight.

The Pennsylvania Railroad has placed an order at its shops in Altoona for 100 special automobile cars, which will be used for carrying the machine and nothing else.

The permanent freight terminals of the Wabash system at Pittsburg are considered to be among the finest in the

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Reports of car shortage in the Pittsburgh district continue.

TEXAS

The Velasco Brazos and Northern Railroad is in the hands of Judge Irby Dunklin, of the Forty-eighth District Court, as receiver. His bond has been fixed at \$15,000, and he is instructed to continue to operate the property. It is not believed the line will ever pay more than operating expenses.

A carload of Chinamen were shipped from El Paso to Bakerfield, Cal., almost under the very eyes of the officials, and reached their destination in safety.

TENNESSEE

Charging that the Nashville, Chattanooga & St. Louis Railroad Company is discriminating against Memphis shippers in favor of Jackson and Nashville, Memphis shippers will ask the next session of the legislative council to withhold any grant of privileges to that road until the road makes an agreement not to make such discriminations in the future.

At a special meeting of the board of directors of the Memphis Freight Bureau, a resolution was adopted opposing the annulment of the contract between the Choctaw & Memphis Railway Company and the city of Memphis, August 3 and August 30, 1899.

VIRGINIA

The exports from Norfolk for January amounted to \$1,339,069 as against \$524,827 for the same month last year.

The Norfolk Chamber of Commerce, Board of Trade directors and the Southern Produce Exchange have gone on record against the Ould amendment, which has for its purpose the prevention of handling freight on Sunday.

The House of Delegates is considering the two-cent rate bill.

WASHINGTON

Twenty thousand cars of freight were handled on the Pacific Division of the Northern Pacific during the month of January, 1906. This was an increase of 5,000 cars over the number handled in the corresponding month of last year.

One of the big liners operated by the Boston Steamship Company will be sent from Seattle to Nome this season to handle the increased freight traffic.

CANADA

The absence of snow is seriously interfering with work during the lumber season, and it is thought that the shortage will result in a sharp advance in prices.

The Grand Trunk will add rolling stock to the amount of \$3,500,000 to its equipment this year.

The C. P. R. and G. T. R. have jointly introduced a new system in their baggage departments for the benefit of suburbanites and other out of town residents who purchase goods in Montreal stores and wish parcels delivered to parcel rooms at the stations of the two railways.

Word reaches Ottawa that the Australian Government has at last withdrawn the discrimination it had shown against the Canadian and in favor of American shipping routes.

The Canadian Pacific has closed a contract with the Dominion Steel Car Company, Limited, for the construction of

500 steel drop bottom gondolas. The cars will have a capacity of 50 tons.

The Canadian Pacific Railway announces a reduction in freight rates, effective February 9, from Eastern points to points on the Prince Albert Branch, Hague to Prince Albert, inclusive.

The reduction to West Prince Albert and Prince Albert represents 25 cents per hundred pounds first class, with a corresponding reduction in classes 2 to 10.

The coming season may produce some interstate rate slashing by the competition of radial roads, the steam railways and the steamboats running between Toronto and Hamilton.

FOREIGN

Complaints in regard to general freight rates are unknown in France, according to Consul General Skinner, of Marseilles. Sometimes there is complaint regarding specific tariffs. If so, it is a matter for the Minister of Public Works to deal with. Although he may not create or modify tariffs, he may veto them, and this, the Consul says, is sufficient to secure to him the virtual right to initiate new tariffs and effect reductions.

The Prussian Privy Councillors, who seek to prove American freight rates higher than those in their own country, are obliged to summon elements to the computation which make exact comparison impossible. They state the American rate as 0.78 cent per ton per mile; the average for 1901-1902, according to the best available figures, was really .757 of a cent. The discrepancy is not great, and the Prussians may have later reports. They give the rate in Prussia as 1.36 cents. But they argue that in Prussia this includes traffic handled here by express companies, and they also point to the high subsidies for carrying the mails, asserting besides that in American reports, but not in Prussian, goods carried for the roads themselves are included in the average. They reach the comfortable conclusion that on a common basis for computation freight rates in Prussia are 0.95, and in the United States 1.44 cents.

The Peninsular & Oriental Steam Navigation Company will institute a fortnightly service, to begin at once, between Hamburg and India, at considerably reduced rates. This is regarded by the press as the first move in a rate war between the P. & O. and the Hansa Line.

The Agrarian League today sent a committee to President Palma to ask him to support the appeal of the league to the railroads to lower their freight tariff on sugar 50 per cent., on account of the low price of that staple, the additional cost of production owing to the poor yield of juice and the extra cost of labor, owing to the high rate of exchange for Spanish silver. The planters assert that the freight on sugar averages from 40 to 50 cents a sack, and that the railroads can afford to make the desired reduction.

Luis Montamoros, general manager of the Pacific Coast Railroad of Costa Rica, is in the United States to purchase equipment for his railroad.

PANAMA

The efforts to relieve the congestion of the Panama Railroad have apparently been successful. The dockage facilities at La Boca are being rapidly improved, and it is expected that the present wharfage capacity will be doubled within the next four months.

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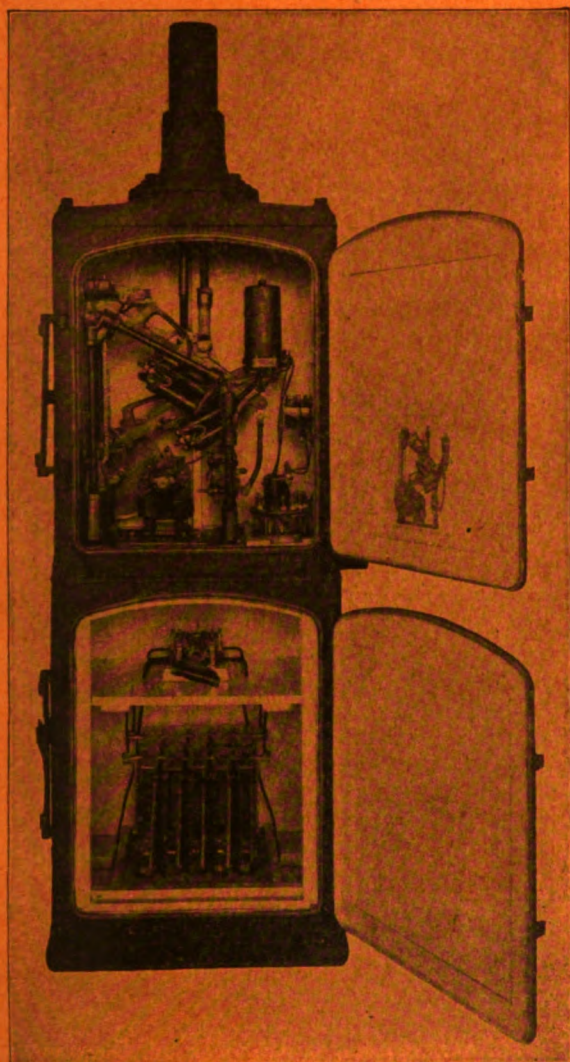
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NEW YORK, APRIL, 1906

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Debate in the Senate on the Hepburn Bill

THE Hepburn bill was received by the United States Senate on February 9, and was referred to the Committee on Interstate Commerce, consisting of: Mr. Elkins (Rep.), West Virginia, chairman; Mr. Cullom (Rep.), Illinois; Mr. Aldrich (Rep.), Rhode Island; Mr. Kean (Rep.), New Jersey; Mr. Dolliver (Rep.), Iowa; Mr. Foraker (Rep.), Ohio; Mr. Clapp (Rep.), Minnesota; Mr. Crane (Rep.), Massachusetts; Mr. Tillman (Dem.), South Carolina; Mr. McLaurin (Dem.), Mississippi; Mr. Carmack (Dem.), Tennessee; Mr. Foster (Dem.), Louisiana; Mr. Newlands (Dem.), Nevada. Messrs. Cullom and McLaurin were absent, but their proxies were held.

Mr. Dolliver, in committee, moved to report the bill without amendment and a recess was taken to consider the motion. It was finally agreed that the bill should be so reported, but that the report should not bind any individual member of the committee on the floor of the Senate. All of the Democrats voted with Messrs. Clapp, Dolliver and Cullom to thus put the bill out. Mr. Aldrich moved that Senator Tillman take charge of the bill, and this motion prevailed by the votes of all the Democrats, reinforced by those of Messrs. Aldrich, Foraker, Kean and Crane.

Mr. Tillman brought the bill before the Senate on February 26. On March 15 he filed a written report containing his views and those of Senator Newlands.

The debate which followed has been of an unusually high order, some of the speeches thus far delivered equalling the best periods of senatorial effort. The discussions have been free from acrimony and passion (although at times somewhat spicy) and characterized plainly by honest efforts to meet and dispose of the great question at issue fairly. A vote on the many amendments proposed and the bill itself is expected before long. The discussion is introduced here by an excerpt from the *Congressional Record*, which shows how the measure was placed before the Senate:

MR. TILLMAN—My legal friends and my capitalistic friends and my lawyer friends all shake their heads; but nevertheless I reiterate the statement that the Interstate Commerce Commission heard the people and granted relief by orders which were obeyed by the carriers, and when they did not obey them went to the courts and got the courts to put in force the machinery of the law and compel their obedience. It is very queer that all at once we now discover that the people cannot get this relief without a whole lot of other machinery, as I said, being added to it, which will put the thing we do not know where. I cling to the horns of the altar which my friend from Maryland has erected, as to the suspension of the orders of the Interstate Commerce Commission by the court under whatever guise it may act, whether chancery or otherwise. However, we have no chancery court.

MR. SPOONER—Equity.

MR. TILLMAN—Equity. It is not the same thing in the United States. We in South Carolina used to have chancellors in other days, but now we have judges. It is equity. I say you want to give the court the right in equity to step forward and decree that the order of the Commission shall be suspended; and I declare if you do that you will rob the people of the chance of redress, and you bring about a condition of paralysis of this effort to relieve the people that will cause immense trouble in this country. Now, I make that prediction. The people are going to have relief.

MR. SPOONER—The Senator said the bill would not give it.

MR. TILLMAN—Did I not say that you could drive not only an automobile through it, but a freight train, too? [Laughter.]

MR. DOLLIVER—My honored friend from South Carolina on one occasion told me that when he said that he had not read the bill at all.

MR. TILLMAN—I just went on the general supposition that a bill that had had such paternity, coming as I understood, and

as I said the other day, from the great legal lights who were very friendly to the railroads, must have in it some saving grace which those corporations wanted, or else they would not have brought it here.

MR. DOLLIVER—I think it is due to myself, as well as to my colleague, to say that the great bulk of the bill came from the Interstate Commerce Commission, and that the really great lawyer who had to do with it was the Attorney-General of the United States.

MR. TILLMAN—And the two gentlemen from Iowa—one at this end and the other at the other end of the Capitol.

MR. DOLLIVER—I will say to my honored friend that I have my first boast to make on this floor of being a great lawyer. I have not acquired the art of saying of one that he is the greatest lawyer in the world and of another that he is still greater, and then advancing my own opinion contradicting both.

MR. TILLMAN—I admire the Senator's modesty much. We all know that in the bottom of his soul he thinks he is as great a lawyer as either of them. [Laughter.]

But I do not care to discuss the issue, except to say that I cling to the horns of the altar, and I plead with Senators on both sides, the lawyers on our side and on the other side, to give us this proposition, in whatever shape you choose, so that the Supreme Court will sustain it, and then we will not have the orders of the Commission suspended by any judge except by a Supreme Court judge. That is the point.

Now, I just want to say to my friend from Ohio, who made some allusion to his bill a moment ago, and, with the pride of paternity, he practically said it was the only good bill that had been introduced. He forgot that little baby of mine [laughter], and which he, along with my friend from Rhode Island, was so much in love with when it was brought modestly into this Chamber that they indicated a desire, if I would consent to

put some little cloak of court review around the little infant, that they should adopt it. [Laughter.]

MR. FORAKER—Mr. President—

The VICE-PRESIDENT—Does the Senator from South Carolina yield to the Senator from Ohio?

MR. TILLMAN—With pleasure.

MR. FORAKER—I said in open Senate, and it is in the *Record*, what I thought of the bill introduced by the Senator from South Carolina. I said if we were to go into the business of Government rate making at all I thought his bill was the best one proposed to make such a provision. I think so yet. It is simple, it is straightforward, just like the Senator—a little blunt, a little brusque—but it gets there all the same. [Laughter.]

MR. ALDRICH—Mr. President—

The VICE-PRESIDENT—Does the Senator from South Carolina yield to the Senator from Rhode Island?

MR. TILLMAN—Certainly.

MR. ALDRICH—I had equally a high opinion of the bill to which the Senator from South Carolina refers and clung to it until he deserted it himself and voted to report a bill through which he now says he can run a train of cars.

MR. TILLMAN—Mr. President, I never deserted my infant. That poor little waif is sleeping calmly and peacefully in one of the pigeon holes of the desk of the Senator from West Virginia [Mr. Elkins], who is the honored chairman of the Committee on Interstate Commerce. I found that there was no earthly show for the bantling before that committee, because the Senator from Rhode Island insisted that he must put his own dress on it, and I was distrustful of his friendly offices in that regard. [Laughter.]

Now, then, to return to the subject matter in a brief way, my bill simply provided that the Interstate Commerce law as originally framed, and as it was amended later on, should have incorporated in it the express power, simply and in the briefest possible words, to give the Commission the right to fix a rate, no more and no less, because the Supreme Court had declared that Congress had not given that right originally. I thought if we could amend that law, which had been litigated and illuminated by judicial opinion and decided the Commission did not have that power, though it took the court ten years to discover it, and if we would put into the law that power, we would at least give to the country that measure of substantive relief which would enable the Commission to examine into a rate, declare it was too high, and then give redress by fixing a rate which would, in its judgment, be just and reasonable. That is all there was about it. As I said, that bantling is sleeping peacefully.

Somebody, by some hocus pocus—I hardly know how it happened—came to us unexpectedly and in a great hurry dumped this baby in my arms. [Laughter.] It is supposed to be, or said to be, for the purpose of giving the people relief. I am suspicious of the paternity of the brat. I am suspicious of the bantling itself. But finding that the Interstate Commerce Committee would do nothing but talk and talk, that they would not take up and consider and undertake to prepare and send to the Senate a bill upon which we could agree, probably because we could not agree, as there were radical differences of opinion in the committee which made it practically impossible that we could ever agree, I thought it was best to bring this controversy into the Senate and out in the open, so that the people of the country might watch the debate, see what is said by each and every man here, and then watch how he votes, because if we do not get this thing settled in the Senate this year, and if we do not get it settled in this Congress before it expires, I do not hesitate to predict that the people will send a Lower House of Congress here that will heed their demands, and in time they will send a Senate here who will do it.

Senator Tillman in his written report said:

The most radical change proposed in the new legislation

is to be found in section 15, in which power is sought to be vested in the Commission, "after full hearing upon a complaint made to determine and prescribe what will in its judgment be the just and reasonable and fairly remunerative rate" "to be thereafter observed in such case as the maximum to be charged," and to make an order that the same shall go into effect and remain in force for three years, which order shall "go into effect thirty days after notice to the carrier and shall remain in force and be observed by the carrier, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction."

Around the first provision the most earnest and exciting contention has arisen, and there is great difference of opinion as to the scope of this clause and the executive powers of the Commission under it. On the one hand, it is claimed most positively that Congress cannot delegate its powers to the Commission and thus authorize it to fix a rate, while on the other hand it is asserted with equal earnestness and force that this power is indisputable. Whatever may be the results of this discussion in the Senate, if the bill becomes a law the final determination of the question at issue must be made by the Supreme Court. The friends of the proposed legislation feel no uneasiness on this point, but in addition there remains the equally great difference of opinion and even greater solicitude upon the question of judicial review.

For the purposes of this report the two contending ideas may be briefly considered. The friends of the proposed legislation are equally earnest with its opponents in desiring to throw every protection around the billions of capital invested in railways of the United States. There is no purpose or desire anywhere to deprive them of the fullest protection of the law or to oppress them in any way. At the same time the cries of the people are most emphatic in demanding relief for producers and shippers against injustice and wrong through oppressive rates and discrimination. It is the duty of Congress to hold an even balance between these conflicting and contending interests.

The friends of the railroads demand the suspension of the remedial order of the Commission pending judicial investigation, while the friends of the producers and shippers strenuously object to such a suspension. It is contended by the former that Congress cannot limit the jurisdiction of the circuit courts, and that the right to issue an injunction suspending the rate fixed by the Commission is inherent in those tribunals. On the other hand, it is asserted with equal emphasis that the power to create all courts, other than the Supreme Court, rests alone in Congress, and that such courts, being statutory, are necessarily limited in their scope and power by the authority which creates them.

I myself incline most confidently to this latter view, and have not the slightest doubt that it is possible to properly amend this bill so as to prohibit the circuit courts from interfering with the orders of the Interstate Commerce Commission by any interlocutory order. As has already been observed in connection with the power to fix rates, this question also must be determined by the Supreme Court should the proposed law be enacted. Amendments may be proposed to more clearly define the method of making any court review, which amendments will serve the purpose of having the order of the Commission stand pending litigation.

The Senate must determine by its vote what shall be its attitude upon the questions of court review and interlocutory suspensions. The whole question at issue as to giving relief to the producing interests of the country revolves around this feature of the bill. If any decision of the Supreme Court shall declare that Congress is powerless to grant speedy relief through a commission, it needs no prophet to tell that an outburst of indignation will sweep over the country.

Mr. Lodge, of Massachusetts, said:

I began my inquiries with the firm belief that there were

serious defects in our methods of carrying on railroad transportation which had given rise to injustice and to discrimination productive of grave evils in the body politic and economic. I also believed that these evils must be met and cured, if they could be cured, by Government regulation and supervision wisely applied, unless we were prepared to see a movement toward Government ownership, which, if successful, I should regard as an unmitigated disaster and one fraught with the destruction of the institutions and principles of government under which we have risen to greatness as a people and which we all revere and love. These beliefs have been strengthened by all that the study of the problem has taught me. Yet I have learned at the same time that the matter cannot be dealt with as a simple question of right and wrong, and that success depends absolutely on the manner, the measure, and the form of the legislation by which we seek a solution of the difficulty. The vital point is not what we desire to do—upon that all thoughtful men are agreed—but how we are going to do it, and there we come to wide divergence of opinions.

The second conclusion which I reached, and I reached it very soon, was that since the foundation of the Government there have been very few questions before Congress more serious or more momentous than the one involved in this measure. This may seem an exaggerated, if not an extreme, statement, and yet I believe it to be well within the bounds of sober truth. Economically there is nothing which approaches in importance our system of transportation, with the single exception of the maintenance of a sound money standard. Tariffs and banks, rates of duty and internal taxes are trifles compared to our system of transportation, whether we consider the advantages which are produced by a good system or the evils which may flow from a bad one. Like the money standard, the transportation of people and of freight comes home, sensibly or insensibly, to the daily business and the daily life of almost every member of the community. Moreover, while it touches and affects the individual, it is also the chief factor in the general prosperity, as well as in the ability of the country to obtain its due share in the markets, the trade and the commerce of the world. To deal with this great question wisely and successfully will tend to promote the well-being and prosperity of millions of human beings. To make a mistake in dealing with it will not only cause commercial and financial disaster of a magnitude almost beyond computation, but will involve possibilities of political change and of alterations in our principles of government the gravity of which cannot be overestimated. The subject, therefore, is one which must be approached without rhetoric and without partisanship, soberly, discreetly, with a full sense of its vast importance, and with a thorough realization that the action of Congress is capable of having the most far reaching effect upon the welfare of the people and upon the future of the United States.

* * *

These three classes of grievances are:

1. Discrimination between persons;
2. Excessive rates; and,
3. Discrimination between localities.

* * *

To sum what we may learn from the English experience, we find that the provision against increasing rates has prevented the reduction of rates; that undue preferences or rebates have been successfully stopped; that discriminations between localities exist, and that the long and short haul discriminations are not interfered with. It therefore appears that in England the rate making by Government, so far as it has gone and so far as it affects discriminations between localities, has had either no result or has prevented rate reductions. To quote from Mr. Acworth's book, "The Elements of Railway Economics," page 158:

"The legislation of the years from 1891 to 1894 has done

much to prevent any natural and gradual lowering of rates. A railway company is still free to lower. It has ceased to be free to raise. A manager may desire to lower a rate, hoping thereby not only to benefit trade, but also, by increasing largely the volume of traffic, to increase his own net earnings. But it is only a hope. In the nature of the case, certainty is not attainable in advance. A prudent manager, therefore, will not, unless his hope is closely allied with certainty, lower a rate when he must face a lawsuit before he can put it up again."

* * *

To sum up the results from this brief review of German experience. We find that in Germany Government rate making and management have been carried out with an elaboration and scientific thoroughness unequaled anywhere else. The result has been the abolition, practically, of rebates or personal discriminations, and the multiplication of all other discriminations, extending not only to localities, but to industries, character of articles and the final destination of the freight. The outcome of this system of discrimination has been to sectionalize Germany and draw tariff barriers around certain regions or districts, and the discriminations have been brought about by the pressure of political, local and industrial interests, have been taken up by political parties, and have played a large part in national politics and in the legislation of the Reichstag. It is also apparent that, although Germany has managed to make a profit on her railroads, the transportation efficiency is low, the railroads are run with great disregard of public convenience, and rates are 50 per cent. higher than our own and are inelastic.

* * *

This is a mere outline of the results of Government rate fixing upon the great staple of Russia, but it is enough to show how Government rate making, oscillating one way and another under the pressure of local interests, has impeded the freight movement and arrested the development of the country.

* * *

To put it a little differently, Government rate making in Australia, if it has dispensed with evils of which we complain here, has opened the door and assisted the growth of evils much more serious in their nature and much more detrimental to the sound and healthy development of the country.

Of the Canadian act Mr. Lodge said:

The act has been in operation so short a time that it is not possible to make deductions of value, but it is already apparent that it has not cured discriminations, but has produced others of a similar nature, as has happened in all other countries where Government rate making has been attempted. The act, in fact, recognizes that discriminations must be made, and proposes to transfer them from the workings of economic forces to the action of a Government board. There is no reason to suppose that the results in Canada under such a system will be different from the results under similar conditions in all other countries.

* * *

The right of trial by jury is guaranteed to every citizen by the Constitution, and like unto it is his title to his day in court. In trial by jury and in an independent judiciary are to be found the very corner stones of liberty. They stand in history side by side with the Magna Charta of England and the Declaration of Independence of the United States. If every other protection were swept away, while trial by jury and an independent bench of judges shall survive, life, property and personal liberty will still be safe and sheltered. The right to trial by jury and to the writ of habeas corpus were firmly established among the English speaking people everywhere long before our Revolution, but the judges were still largely under the control of the Crown. So deeply did the great men who framed the Constitution feel this that one of

the leading and governing principles of their action was to secure in the organic law the complete separation of the judiciary from the legislative and executive branches of the Government. The great court which they then established in the Constitution has been, of all its many memorable features, that which has most attracted the admiration of the world. To that court we owe the protection and development of the Constitution under Marshall, and it has always been the upholder and defender of ordered liberty and of personal rights, whether threatened by the rich and powerful or put in jeopardy by popular excitement or by excesses in legislation.

No one would pretend that judges have never decided wrongly, that the law's delays never wrought injustice, or that the courts have not, in the administration of the criminal law, often given too great weight to technicalities which were once a refuge from a bloody code, but which, with the softening of manners, have become a mere obstruction of justice. To assert otherwise would be to say that the courts were infallible, and that can be said of nothing human. But as we look back over the long vanished years, as we contemplate the movements of our daily life, we should be blind indeed if we did not perceive that many of the greatest and most enduring victories in behalf of human freedom have been due to the wisdom and courage of the courts, and that day by day substantial justice is rendered unnoticed and unmarked in the countless controversies which arise between man and man. The courts are the greatest bulwark of the order of the State and the liberty of the people. It will be an evil day when they decline in character or when we lose faith in them. It will be hardly less evil if we try by any statutory device to exclude from the courts any American citizen who would seek their protection for his life, liberty or property. We are about to pass a great measure from which, I hope, great good may come, but one which in its operation will affect the property and interests of millions of our fellow citizens. It should be guarded with scrupulous care, but above all it should provide that no man should be deprived of his opportunity to go to the courts in defense of his rights if he thinks those rights are invaded.

Mr. Foraker, of Ohio, said:

These evils are, generally speaking, of three classes—excessive rates, rebates and discriminations.

* * *

A more serious class of evils, because more prejudicial in their consequences and results, are rebates. They are granted under many forms and guises, and include not only money payments, but all kinds of discriminations between shippers, such as undue allowances for terminal charges, elevator charges, refrigerator charges, icing charges, and private cars, false weights, improper classification, underbilling, and many others too numerous to mention. The practice of giving rebates was a result of sharp competition between roads for business. At one time almost if not quite every road in the country indulged in the practice. Shippers who secured such preferences had an unjust advantage over their competitors, and the railroads that granted them suffered in the loss of revenues. The strongest and most prosperous railroads, although, like the others, granting these rebates, were always, as a rule, anxious to put a stop to the practice. In that behalf, many traffic agreements and arrangements of one kind and another were entered into, including many others that were known as pooling arrangements. All these arrangements and agreements proved ineffectual to a greater or less extent. The pooling arrangements were more nearly observed than any others, but they were unfortunately named, and because they prevented, in some measure, at least, free and active competition, they were always unpopular. In consequence, they were prohibited by the Interstate Commerce Act of 1887. Subsequent to that statute, traffic agreements and arrangements were chiefly relied upon. They were in effect simply agreements between competing roads as to what were re-

garded as reasonable schedules of rates, coupled with the further agreement to maintain the same.

* * *

This bill increases the powers of the Commission in many respects, but I shall call attention to only its most important provisions of this character.

It makes the order of the Commission condemning a rate effective and thereby disposes of that rate, and then authorizes the Commission to name a new rate and put it into operation in place of the condemned rate.

It authorizes the Commission to compel disagreeing railroads that have nothing in common except a physical connection to operate jointly as through routes on such rates and terms as it may impose.

* * *

It dispenses with jury trials in an important class of actions to recover money by providing a procedure that makes such trials impossible.

It imposes such extreme, unreasonable, and burdensome penalties as to probably invalidate the measure in that respect. It does not provide for a proper review by the courts of the orders of the Commission, but seeks to exclude the same.

There are other provisions that merit attention, but these raise all the questions I care to discuss at this time.

There is a common agreement that, although the railroad situation is vastly improved as compared with what it was only a few years ago, there are still, as there probably always will be, many evils to remedy, and to that end there should be some kind of appropriate legislation.

The principal difference of opinion is as to whether to accomplish this common purpose the legislation to be enacted should be of an amendatory character, such as to work out these remedies of the courts, where ordinary controversies are settled, or should be such as to confer the rate making power to be exercised in the way provided by this bill on the Interstate Commerce Commission.

I believe in the court plan, as contradistinguished from the rate making plan, not alone because it is, as I shall endeavor to show, much simpler, much more expeditious, much more efficient, and without expense to the shipper, but because, in addition to all that, it avoids all legal and constitutional questions, while the rate making plan as set forth in this bill encounters a number of such questions that are of the most serious character, and some of them, in my judgment, fatal.

* * *

The assumption that Congress has the power to fix rates as a part of the power to regulate commerce is largely due to the fact, no doubt, that the States undeniably have this power. But the one does not follow from the other. The cases are wholly different. The States are complete sovereignties, except only as they have delegated their powers to the Federal Government. Among the powers they have reserved is the power to grant franchises to be a corporation. It is in this proprietary power to create corporations and give them authority to conduct a designated public business, such as that of a common carrier, that the power is included to prescribe as one of the terms and conditions of such franchises that the State shall have authority to fix rates and prescribe any terms and conditions it may see fit to impose. This power is unquestioned, because the corporation is the creation of the State. It gets its every right and privilege from the State and must, therefore, accept its life and its powers and rights and privileges, subject to such conditions as the State may see fit to impose.

* * *

The wisdom of this constitutional provision for the separation of these co-ordinate powers of government is strikingly manifested by the jumble attempted in this instance. The proposition would be alarming if its utter unconstitutionality were not as apparent as is its unreasonableness. It involves the general supervision by a political board, appointed by the President, of a business so tremendous as to be practically in-

comprehensible, and so complicated and difficult in its character as to be almost beyond the power of human intellect to master it, with authority to change rates with the stroke of a pen, affecting revenues to the extent of millions of dollars, and to make new regulations of every character affecting the operation of more than 200,000 miles of railways, and affecting also, because of their relation to the railroads and their dependence upon them, almost every other kind of important business conducted throughout the length and breadth of the country; and in this behalf this board, to the judgment of which these vast interests are to be subjected, is authorized to be legislator, prosecutor, judge, jury, and marshal, all combined. In all the legislation of more than a century no such proposition has ever before been successfully presented to the American Congress. It would be an absolute disaster to the country if it should be successfully presented now, were it not that it is impossible for such a measure to receive the sanction of the courts, not alone because of the bad results which would follow from this particular legislation, but also because if such a commingling of power can be sustained as to legislation of this vastly important character it will be a precedent of such commanding force that it will be idle to ever hereafter in connection with legislation talk about three independent and co-ordinate departments of government, the powers of which are not to be blended and merged. It will be a fitting time, when we vote on this bill, to demonstrate that there are still three departments of government and that they are still, as our fathers intended, separate and independent as well as co-ordinate.

A second question, equally fatal to this legislation, at once arises—whether the provision quoted amounts, if sustained, to a delegation of legislative power.

The power conferred is "to determine and prescribe what will, in its judgment, be the just and reasonable and fairly remunerative rate * * *" and then by proper order put it into operation.

"Just and reasonable and fairly remunerative" are indefinite terms.

Different minds might, and most probably would, reach widely different conclusions as to what they required in almost any given case. All any commission could do would be to act according to its best judgment, and that is just what the bill recognizes and requires, for its requirement is "to determine and prescribe what will, in its judgment, be" the proper rate, etc.

* * *

Section 5 of the Hepburn bill purports to amend section 16 of the Interstate Commerce Act as amended March 2, 1889. It would be more correct to have provided that what is set out in section 5 should be a substitute for section 16, because of the great dissimilarity not only in language, but also in legal effect between section 16, as it now stands, of the Interstate Commerce Act and the section as it will read if amended as proposed. Section 16 of the Interstate Commerce Act as amended March 2, 1889, authorizes the Commission, or any party interested in any order the Commission has made under the provisions of that act, to apply by petition to the Circuit Court of the United States, sitting in equity, to enforce such order on complaint that the same is being violated, and the court may, in ordering compliance, make also an order for the payment by the carrier of such sum of money not exceeding \$500 per day for each day that the carrier shall fail to obey its order of injunction or other process. This is in the nature of a fine for contempt, and therefore clearly within the power of the court to impose.

* * *

There are many other provisions of this bill that might be justly and severely criticised, but I have called attention to enough to warrant the conclusion that if it should be passed there will be many orders made affecting the rights of carriers, especially under section 15, as this act proposes to amend it, of the Interstate Commerce Act, which seeks to empower the

Interstate Commerce Commission to change rates and establish through routes, which the carriers will desire to litigate.

* * *

I dislike exceedingly, as every other public man does, to be arraigned before the country by unfriendly critics as prompted by unworthy motives in the attitude assumed, and to suffer in consequence in the esteem of the people. It is far pleasanter to go with the tide of public sentiment and enjoy the benefits of harmonious relations with co-workers in the public service and have the acclaim instead of the disapprobation of constituents; but no man who allows himself to be controlled against his judgment, by considerations of this character, can do his duty, or maintain his self-respect, or be entitled to retain the respect and confidence of his colleagues and constituents. If we enact this measure and it proves disappointing, as I believe it will, the people will not hear us to say in our defense that we legislated in response to their demands. They expect their representatives, especially in this body, with respect to questions of this character, to act intelligently, patriotically and in accordance with their judgment and their oath of office which binds them to disregard public clamor and legislate for the public welfare as they see and understand it. We owe it to ourselves, as well as our constituents, to meet this just expectation.

Mr. Dolliver, of Iowa, said:

It will be seen, therefore, that this bill instead of undermining the Interstate Commerce law in reality fortifies and reinforces it, preserving intact those great commandments which lie at the foundation of industrial peace in the United States. They constitute a bill of commercial rights so complete that they are entitled to all the encomiums they have received in the railway literature of our language. If that law had been obediently accepted by the railway world and by the business community—for both have been parties to their nullification—if it had been treated with that reverence and sanctity without which the laws of the land become a mere echo of vain moral aspirations, if they had been violated only by bad men, indifferent to the disgrace of lawlessness, the American people, if they demanded their amendment at all, would have approached the subject in a frame of mind somewhat different from that which has actuated the present agitation in some sections of the country. The defects of that law lay not in an imperfect definition of the rights and duties of carriers, but in the failure rather to anticipate the motives that would press in from a thousand different directions to defeat the principles embodied in it.

* * *

Having thus broadened the meaning of the word "transportation," by requiring that every charge incident to the service shall be reckoned as a part of the published rate, the second purpose of the bill is to provide a tribunal for the prompt and effective settlement of those controversies likely, as I believe, to become less and less numerous, which arise between the roads and their patrons growing out of alleged violations of the law. Numerous suggestions have been considered for the creation of extraordinary tribunals, administrative or judicial, before which these complaints may be presented for trial. Without disparaging any of these plans, for many of them—notably that suggested by Judge Grosscup—contain elements of wisdom, it has been deemed necessary to materially modify the machinery for enforcing the law created by the Act of 1887.

* * *

I need not say that I accord to the distinguished Senator from Ohio full credit for the integrity of his purpose in bringing forward this proposal. I do not now dispute the constitutional grounds upon which his proposition is founded. I used to take my constitutional law second hand, and, owing to my temperament, in very small lots. I have seldom indulged the disposition to furnish forth a constitutional feast of my own, but have preferred to imitate the wisdom of those housewives who, instead of cooking their dinners at home,

have fallen in the way of sending for professional caterers to prepare the food and set the table; but I have made up my mind during the past summer that whenever I want to know if a thing is constitutional I will attend to the details myself.

* * *

I have quoted these observations because the opinion of Lord Campbell seems to coincide with that expressed by one of the most famous and honored of our own circuit judges, who has given much time and attention to the questions which we are debating, and I therefore desire to read a brief statement from a recent utterance on this subject by Judge Grosscup, of the United States court, placing his opinion by the side of that expressed by Lord Campbell in behalf of the whole bench of the Court of Common Pleas in England.

"The core of the evil is that, as things now stand, nothing is done. In my judgment, the reason of this is not so much the difficulty of the law as it is the difficulty of its administration. One of the reasons is the incompetency, the total incompetency, of the Circuit Court to pass upon that question. What is the daily life of a Circuit Court Judge? One day he is exploring the intricacies of a patent case, following it through all its meanderings to its incubation away back in some inventor's brain. Another day he is hearing a personal injury case, with his sympathies in rigid control lest they should outweigh his judgment. On another day he is hearing some customs case, determining whether the particular goods under consideration come within this or within some other classification of the law. Another day he is pursuing the meanderings of some chancery case. Every day brings up some new subject, covering some wide area upon which he has to be specially educated for the day's judgment.

"Now call him from this judgment seat to determine a question that turns, not upon the particular rate that is laid before him, but which must take in the whole horizon of the country's commerce—that is as perplexing, as confusing, as intricate as the wire fences that the Russians put around their fortifications in the Far East to keep out the Japanese. Call him to take out of its place with the judicial forceps one of this class of cases, as the watchmaker would take out a wheel or a peg from a watch. It is a thing he can't do without taking out the whole inside of the whole rate or transportation system. Call him to decide that question, and you will submit one of the greatest, the most perplexing, the most difficult questions to a man who has had no education, no vision of the subject upon which he is expected to rule. Thus I say that the Circuit Court is an incompetent court."

* * *

I agree perfectly with Judge Grosscup that the American people are not seeking the entertainment of lawsuits to fill courts with questions alien to the disposition and faculties of our judges. The American people seek to have certain grievances considered in a practical way by men capable of understanding them, and, above all, capable of approaching the subject unconcerned about anything except the merits of the controversy. So that, in supporting the pending measure, I am only seeking to follow where the common sense of a kindred community, having learned its lesson from experience, has marked out the path.

Mr. Scott, of West Virginia, said :

I want to secure to the greatest number the greatest good, and this can be done, in my opinion, better by trained railroad men, who have made this question of rates a lifetime study, and acting under the restrictions proposed before, than by any commission.

I realize, however, that there is a demand that the Interstate Commerce Commission should be given authority in the matter, and that power will probably be given it to fix rates when conditions require it. I am opposed to giving them that power, certainly without a provision for a broad and general court revision, to which the shipper and carrier can

appeal when the rate designated is unfair to either. I hold to such a revision by the court, since the history of the Interstate Commerce Commission has shown to my mind that the power of the court to review their decisions has simply saved this country from the experience of European countries. That experience has shown that discriminations of a more serious nature than we have exist, and prove conclusively that the results coming to us, had the Interstate Commerce Commission the powers to enforce its decisions, would have been disastrous beyond comparison.

Mr. Clapp, of Minnesota, said :

The first serious objection that is made to this bill is that the bill does not itself provide for a trial somewhere in a court of justice. From the foundation of the Government Congress has been passing laws that affect the people. This is the first time in connection with this subject that it has ever been suggested that the law operating to carry into effect the will of the legislature along governmental policies should also be a revision of the code of judicial procedure.

* * *

In fixing a rate we have the undoubted right, either by act of Congress direct or through a commission, to prescribe a reasonable rate, and down to the point of a reasonable rate it is not the taking of the property of the carrier, because in law the carrier has no right of property above a reasonable rate. In determining that reasonable rate you are simply drawing the line between the property of the carrier on the one hand and the property of the shipper on the other, and it does not involve the taking of private property either without process of law or in violation of the constitutional requirement that it can only be taken on paying just compensation.

* * *

It has been suggested from time to time, not in public debate here, but in the effort to reach a happy solution of this problem, that we should put into the bill this provision or that provision as to what the court may do upon an appeal to the court. The objection on the part of the framers of the bill has been that if such a provision, whatever might be its term, be varied, limited the equity power of the court, then the court when appealed to by the citizen in behalf of his property rights would either have to disregard it, or, if the court did regard it, it would be a limitation upon the right of the citizen and probably be declared void; so it was deemed safer not to attempt any direction, but leave the equity power of the court as it exists.

* * *

Now, ordinarily, the party seeking to avoid the force of a determination or judgment can, pending the determination of its hearing, avoid its force at the first determination by giving a bond; but in this case it seemed impracticable to make such a provision. The difficulty about the carrier securing to the shipper a return of the excess pending an examination of the validity of the order is found in the fact that it is difficult to determine who pays the freight.

We used to hear a good deal about Jones, and Jones used to advertise that Jones paid the freight. Sometimes Jones paid the freight and sometimes Jones did not pay the freight. If Jones was making more wagons than he could sell, then he would pay the freight to get the wagons in the market. If the market was demanding more wagons than Jones was making, then the purchaser would have to come to the factory to make the purchase, and the purchaser paid the freight.

Mr. Culberson, of Texas, said :

The Federal Government being one of limited and enumerated powers, if a given power exists it must be found in the Constitution. The authority of Congress to regulate foreign and interstate commerce does not spring, as has been suggested by a distinguished Senator, from the general welfare clause of the Constitution. That phrase is used but twice in the Constitution—once in the preamble and once in that sec-

tion which confers upon Congress power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States.

* * *

When, therefore, Mr. President, the subject of proposed legislation is commerce and, moreover, is commerce with foreign nations or among the several States, the authority to regulate it is exclusively and completely in Congress. The converse of the proposition is true. If the subject of proposed legislation is not commerce, or is a mere aid, auxiliary, or incident to such commerce, or if it be in fact commerce, yet commerce of a domestic or intrastate character, the authority to regulate it is exclusively and completely in the States.

* * *

To regulate, Mr. President, is to arrange, adjust, dispose, methodize, direct, order, rule or govern. On principle, and as an original question, the power to regulate commerce includes the power to fix rates of transportation, because transportation is commerce; and to fix the rates is to that extent and necessarily to prescribe the rule by which it is governed.

* * *

If, Mr. President, the power to establish rates of transportation of foreign and interstate commerce is comprised in the general power to regulate commerce; if this power to fix rates may be exercised directly by Congress, or, to the limited extent proposed, may be devolved upon the Interstate Commerce Commission, when and upon what grounds may the courts of the United States interfere in the interest of the carrier to prevent the enforcement of rates so established? This question as it relates to State regulation of rates has been frequently decided by the Supreme Court of the United States, and while the decisions are not decisive of the question as it arises here, the reasoning is applicable and instructive.

* * *

But, Mr. President, when interrupted I was speaking with reference to what ought to go into this bill with respect to the right of judicial review. I have said that, in my opinion, it is unnecessary to incorporate such a provision, but that it would be harmless if incorporated. I desire to say now that if the bill undertakes affirmatively to limit or deny the constitutional right of review, that provision of the bill would be void, although the other part of the act might stand and be effective.

* * *

Already, Mr. President, the general establishment of rates throughout the United States is dictated by a body of capitalists who control the great systems, not much greater in number than the Interstate Commerce Commission, and the philosophy of this bill is to protect the public in some degree against the selfishness of this combination by conferring limited and emergency powers upon an organized, legal and impartial tribunal which will represent fairly every interest entitled to consideration, and which will be actuated and guided by principles of justice, and not the merciless and despotic standard of what the traffic will bear. And the public will ultimately come into its own. Special interests may disregard popular rights for a time, may despise and deny and trample upon them for a season, still they will triumph; and, if need be, these interests will be made to feel that the people have not yet lost the spirit of resistance.

Mr. Simmons, of North Carolina:

The fact, Mr. President, if it be a fact, that the specific schedules of the six great classes into which most subjects of transportation are segregated and to which a common charge is applied have not been increased would not show, nor would it tend to show, that the freights actually paid by producers and shippers have not been increased. What it would show, and all that it would show, is that if rates have been increased they have not been increased by the open and above board process of raising these class charges. As a matter of fact, shown by railroad statistics themselves, as well as by the

reports of the Interstate Commerce Commission, railroad rates have been increased and largely increased during the last six years not by the process of raising the specific rate of schedule or commodities, but by the more insidious method of commodity reclassifications.

Beginning with the year 1900, hundreds and even thousands of articles have been reclassified by raising them from a lower to a higher priced class in the various orders promulgated by the railroads in the several divisions into which they have divided for this purpose the whole country. In one classification, known as Order No. 20, issued early in that year and applying to Northern and Eastern traffic, there were nearly 600 reclassifications, of which 572 were increases and only 6 reductions. By another reclassification order made in the same year and known as Order No. 30, and applying to Western business, 257 reclassifications were made, of which 240 were increases and only 17 reductions, while Order No. 25, applying to Southern traffic, made in same year, out of 636 reclassifications 531 were increases.

* * *

Mr. President, the evils of which the people complain are militant and tangible; they exist in the experience and knowledge of every man whose business interests are affected by excessive transportation tolls. The complaints which fill the press and which come to us in countless petitions, memorials, and resolutions are based upon statements within the knowledge and experience of the complainants as to things that have happened and are happening every day under the system which Congress is asked to change. These complainants come to us and say: "Here is an evil, portentous and all pervading, and here is the remedy. You have the power to apply the remedy, a power given you in trust for our benefit; we demand that you use it."

On the other hand the railroads who resist this legislation and insist that the people who created them and who support them shall have no share in fixing the tolls and exactions which they are required to pay, come to Congress with arguments and theories; with deductions and prophecies not based upon actualities; not based upon what has been and what is, but upon statements of their belief and fears of what will result to their interest and that of the country from this legislation. For my part I think it is safer to act upon facts than upon theories, upon actualities than prophecies, upon conditions existant than upon conditions predicted—predicted conditions which have never in our experience resulted from similar causes and will not probably happen in the future.

Mr. President, the past is certain, the present is reasonably so, the future is nebulous; but it is a darkness illumined by streaks of light, reflected from our experience in the past and the present. There is nothing in this experience to admonish us against this legislation, but much to cheer the hope of the people that it will afford relief from conditions which now handicap with unequal exactions the industry and commerce of the country.

Mr. Nelson, of South Dakota, said:

If this bill becomes a law it will not be as difficult as heretofore for the Commission, if the facts are fully presented, to pass upon the question of rate. Heretofore it has been a question as to whether a given rate was reasonable or not, and the term "reasonable" has been applied in the same sense as the term "quantum meruit" at common law, involving a somewhat complex question. By the terms of the bill the rate fixed must not only be "just and reasonable," but it must also be "fairly remunerative." And this is a distinct gain in favor of the railways. They can now insist upon what they could not always and under all circumstances insist upon before, that the rate fixed must be a "fairly remunerative rate."

And in case of a review by the court the findings of the Commission will be of great value and assistance to the court. They will surely be of more value, of more help, and of more

weight than the mere findings of a single master in chancery. It is of great advantage, both to the litigants and the court, to have such cases first pass through such a commission—a body that devotes itself exclusively to such cases. To an ordinary trial judge, who must give his attention to a variety of complex cases, it is no easy matter, single and alone, to take up a complex rate case, especially if he has had no business experience or training. He is more likely to err upon a question of fact than seven intelligent men of business training and experience.

* * *

No such general and unlimited right of review with stay ought, under any circumstances, to be granted without:

(1) Showing good, valid and sufficient cause for the stay, and the cause shown should, among other things, specify to what extent the Commission rate would, in the aggregate, work a diminution from the former rate pending the period of review; and

(2) Without an ample bond or deposit of money equal in amount to the total diminution in rate alleged as a ground for stay, and such bond or deposit, in case the Commission rate is sustained, to inure to the benefit of those who have, pending the review, paid freight in excess of the Commission rate, to reimburse them for such excess.

Mr. Rayner, of Maryland, said:

Our position here is, in the first place, that you must put into the bill a court that can try the constitutional question. You have a bill without a court. We might as well be frank about this business. As a matter of law and as a matter of right—I may be wrong, and, of course, I only advance my suggestions for what they are worth—you have a bill which, when attacked by counsel for the railroads, will be declared unconstitutional by the Supreme Court of the United States, because it gives no court in which the railroad or the shipper can obtain a judicial review of the orders of the Interstate Commerce Commission. Assuming that I am wrong and that it does give you a court by indirection, providing the venue in which the suit may be brought, but failing utterly to give a court of competent jurisdiction to try the suits when they are brought.

* * *

The bill provides that this rate is to end at the end of three years. You go into the Circuit Court. The Circuit Court suspends the order. Then when you lose in that court you get to the Circuit Court of Appeals and there is another order suspended, and you go to the Supreme Court and there is another order suspended. Recollect, during all this time the challenged rate is in existence, and when the three years run out the order of the Commission expires. I stand upon the proposition as to the word "suspension." I withdraw, if it creates any difference at all between us, the suggestion that any railroad counsel had anything to do with it, but whoever had anything to do with it, if you leave in that word "suspension" without a qualifying clause, without compelling the courts to try cases upon affidavit, where the shipper can be heard, without limiting the time in which the order ought to cease to be effective, and leave it just as you have it in the Hepburn bill, you do not accomplish anything. You never give the shipper one day of the rate the Interstate Commerce Commission fixed. If they reduce the rate from \$1 to 75 cents, the earlier rate can be kept in existence during the whole of the three years, and the shipper during the whole of the three years never gets the benefit of the 75-cent rate, and at the end of three years the original rate goes into existence again.

Now, what do you think of a law that has a provision of that sort, whether intentionally or unintentionally? Mr. President, I know the answer. The answer is that it is a constitutional incident; that, if you give the carriers the right to go into court, they ought to have the right to protect their property. That word is a very beautiful word; it is attractive

to the sight; but in this bill it is deadly and withering to the touch. I cannot accept it. In my judgment it blights and blasts the whole intendment of the act, and I want to say right here that, rather than leave those words in the bill in the phraseology in which they are now, I would rather that the bill would not pass; I would rather that you would repeal all existing legislation; I would rather abolish the Interstate Commerce Commission, tear down the whole infirm and feeble structure, and let the railroads drive in triumph over its ruins.

* * *

I say a railroad can go into court and prove that it is being unjustly compensated without being able to prove that its property has been confiscated. Confiscation means forfeiture. As I recollect it comes from the Latin word which means treasury. It has the same root as the word "fiscal." It implies a forfeiture. If you ask me whether there is any difference between "unjust compensation" and "unreasonably low," I say possibly there may be a margin of difference. But it is very narrow and very difficult to define. I think if, under the Nebraska decision, you go into the Supreme Court of the United States, the Supreme Court will say this: "If we employ our common sense upon this subject we will agree upon this proposition." The Supreme Court will say: "People do not build railroads just for amusement. They are entitled to a profit." Does anyone suppose men will expend millions of dollars in building a railroad simply to get 3 or 4 per cent. on the bonds they own? The Supreme Court has said: "You must pay the operating expenses. You have to pay the interest on the bonded indebtedness. And then you must pay fair dividends on its stock." I will tell you what question they have left open. I have examined these cases very thoroughly. I want to say to the Senate, because I believe I may, that before Thompson's annotated edition appeared I annotated all the State and Federal authorities on this question for my own guidance. I came to this conclusion: If you put in this bill the definition of "unjust compensation," under the Nebraska case you get all you want.

* * *

MR. DOLLIVER—I am in favor of so framing the bill that it will pass the criticism of the courts of the United States. I will say to the Senator from Maryland that he has undertaken to muss up the question by his discourse, and I am afraid that, on the whole, his discourse has not strengthened the cause of the public against the railroads.

MR. RAYNER—I am inclined to think, with great deference, that it has cleared it up a little more than the present attitude of the Senator from Iowa—decidedly more. If the Senator from Iowa insists upon leaving in this bill the suspending orders, we might as well defeat this bill. So think we all of us on this side of the chamber.

* * *

I have no fear or anxiety, not the slightest, that the Commission will perpetrate any act of injustice under this measure, and I believe that the power of the courts under the fifth amendment is ample to protect the property of the carriers. If the Senate, however, should take a different view and invest the courts, in addition to the inherent power that they now possess to protect the railroads from confiscation, with the further power to review the proceedings of the Commission as to the reasonableness or justness of its orders, then I shall in proper time offer an amendment that the courts complete the work that is before them and that they do not engage in the idle process of sending cases back again to the Commission without any effective order or legal suggestion as to its future action.

* * *

What every one wants to accomplish, every one who has the welfare of his country at heart, is to prevent the extreme and radical elements of both parties from obtaining control and then forming an alliance that may threaten danger to our

institutions. This is the real peril that menaces us and one way to avoid it is for corporate interests not to continually throw down the gauntlet and challenge public opinion whenever essential reforms like this are under discussion in legislative bodies. Public opinion in this country is not in favor of parceling out the railroad franchises of the country among a few systems and giving them undisputed sway over the territory of the Union. Let me tell you, too, that when public opinion is in pursuit of an object of this sort it generally reaches its accomplishment. I have often watched the struggle.

Mr. McCreary, of Kentucky, said:

Mr. President, it has been well said that railways in America have had four ages, first the age of construction, next the age of competition, then the age of combination, which is to be followed by the age, which the pending bill illustrates, of Government regulation, and we are also confronted by the fifth age known as Government ownership of railroads. I predict that if we do not meet this question at this time in a broad and just manner, the people will find some way to put upon the statute books more stringent and more radical laws, not only for Government rate making and Government regulation, but they may seek Government ownership of the great railroad lines conducting an interstate commerce business, so that while we are now confronted with Government regulation we may be confronted soon with Government ownership.

* * *

More than half the States of the United States have statutes delegating to commissions rate making power. Cases arising under these statutes have repeatedly been in the district courts and circuit courts and the Supreme Court of the United States, and the courts have always held these statutes valid and constitutional. There are thirty-two State railroad commissions, twenty-four of which have power to make rates, as follows:

Alabama-Arkansas, after giving railroads ten days' notice.

California, are effective after twentieth day of service on railroads.

Florida, after giving notice and hearing all parties interested.

Georgia, joint rates can be made only after hearing, with thirty days' notice.

Illinois, after furnishing railroads with printed copies of schedule.

Indiana-Iowa, must give two weeks' notice after revising maximum rate.

Kansas, can raise rates only after six days' public notice.

Kentucky, after ten days' notice and hearings of railroads.

Louisiana-Maine, after due notice and hearing of railroads.

Minnesota-Mississippi, after ten days' notice to railroads.

Missouri, New Hampshire and North Carolina, corporation commission, with powers to fix rates subject to right of railroads to file exceptions within ten days and be heard.

North Dakota, after notice to all parties and hearing.

South Carolina, thirty days' notice before rates become effective.

South Dakota, after ten days' public notice and hearing.

Tennessee, after ten days' notice to railroads.

Texas, after ten days' notice to all interested parties, with hearing. Emergency freight rates after three days' notice to railroads.

* * *

In our country at the present time we are confronted by three propositions:

Government regulation of railroad rates.

Government ownership of railroads.

Indorsement of existing railroad laws as being sufficient for the demands of the times.

I support the first proposition. In my opinion, the just and equitable way is for railroad companies to fix their own rates and charges and then, by proper legislation, the Interstate Commerce Commission be authorized and empowered to

hear all complaints and determine what is a just and reasonable and fairly remunerative rate, and enforce it according to the provisions of the pending bill.

Mr. Bailey, of Texas, said:

Now, Mr. President, I return to the question whether Federal courts have inherent powers.

That they have inherent powers in one sense is true; that is, if you create a Federal court, and do not expressly forbid it to exercise certain powers, it possesses them by virtue of its creation. Such is the power to issue an execution to enforce its judgment; such is the power to punish summarily for contempt; and yet the books are full of cases which affirm the power of Congress to prohibit this right of the court to issue execution or to punish for contempt, except according to the statute.

When the Supreme Court expressly has decided that Congress can regulate the power of a circuit court to issue an execution, in God's name how can a lawyer contend that Congress cannot regulate the right of that court to issue a mere interlocutory decree? How vastly more important to the due administration of justice that the court shall issue executions to enforce its final and deliberate judgment than it is that they issue a mere interlocutory decree! The opinion which holds that Congress can prescribe and limit the court's right to issue executions was unanimous. It was not by a vote of 5 to 4 nor 6 to 3, but all—the entire court—concurred in saying that the courts of the United States have no inherent power to enforce their own judgments against the limitations imposed by the act of Congress.

* * *

Mr. President, it is neither true as a matter of law, nor is it true as a matter of fact, that I am seeking to deprive any railroad of its property without a just compensation. All I am contending for is that the rate which the Commission, after a full hearing, has said is a fair one shall stand until condemned by the final judgment of a court upon a full investigation of the case.

What rate is more apt to be just and fair—the rate fixed by the railroad, inspired by its selfish desire to increase its earnings, or the rate established by an impartial tribunal? The railroad managers, under their view of their duty and their situation, do not owe as much to the public in the way of just rates as they owe to their stockholders in the way of dividends and profits.

* * *

MR. ALDRICH—As I understand the views of the Senator from Texas, he is in favor of having a full and fair judicial determination finally of the question whether the rates fixed furnish just compensation or not?

MR. BAILEY—I am. I have never seen the hour, and I sincerely trust I will never see the time, when I can be clamored into closing the doors of the courts against any person, natural or corporate. The right to a trial is not only sacred under the Constitution, but it was sacred before the Constitution was adopted. If you could destroy the Constitution, if by burning its parchment you could release us from our obligation to support it, I should still stand here contending for the right of every man to have his day in court. But, Mr. President, the right to a day in court, the right to have a fair and an impartial trial, does not embrace the right of allowing an arbitrary Federal judge to set aside without sufficient inquiry the deliberate judgment of a competent and impartial board.

* * *

MR. BAILEY—The only possible way to protect the Commission and to protect the people against frivolous suits instituted in bad faith is to provide that the court cannot set aside the rate until the question has been fully adjudicated. Of course, you cannot look down into the heart of a suitor when making allegations that his lawful rights are impaired or about to be sacrificed and determine whether he acts in good faith or not. But the most you can do—and I will say to the Sen-

ator from South Carolina that that is one of the chief purposes of this limitation—the most you can do is to say that no court shall suspend the order until a final hearing, and thus no frivolous suit can do much harm.

Mr. Patterson, of Colorado, said:

What I wish to call the attention of the Senator to is the trouble or troubles that Senators upon both sides have discovered in this attempted legislation: First, the extent to which a review will be allowed by a court. Next, as to whether or not there shall be interlocutory orders staying the operation of the finding of the Interstate Commerce Commission before the final determination by the court; and, in connection with that, the matter of delays that seem inseparable from court proceedings.

Now, why might not the matter be solved by transforming the Interstate Commerce Commission into an interstate commerce court, eliminating the Commission, establishing a special court, as has been done in a great number of instances by Congress under the constitutional provision, and in the act constituting the interstate commerce court embrace practically every one of the provisions found in the Interstate Commerce Act and amendments thereto? Pretty nearly all the powers that are conferred upon the Interstate Commerce Commission may be said to be judicial powers. The Commission exists for the purpose of making investigations, for the purpose of determining questions of fact, to listen to the complaints of those who are injured in dealing with railroad companies, and then to provide relief for the injured parties.

If we have the interstate commerce court, there will be no room for interlocutory orders. If there is an appeal, then there will be nothing but an appeal; there will not be any original proceeding. As the matter stands in the proposed act, in whatever form it may ultimately pass, when the side to a controversy that has the complaint to make enters the court the trial is *de novo*. It must be as though there had

been no money expended by litigants upon either side before the Interstate Commerce Commission. The witnesses must be again subpoenaed, the books must be again examined, the lawyers must again be heard; and it is only after the long and the tedious trial which must be had when you first get into a court that there is room or standing for an appeal.

If the Interstate Commerce Commission can be transposed into a court, then there is no need nor is there room for an interlocutory order; for, of course, the rate must stand as it stood when you appear for the first time before the Interstate Commerce Commission, until there shall be an adjudication of the question that is presented by the aggrieved shipper or by whomsoever else may desire to enter a court. Then comes an appeal, an appeal under proper limitations, an appeal in which there will be no room for the interposition of an injunctive order. The appeal comes upon the record, and there is not even the necessity or the opportunity for a second trial.

It seems to me, Mr. President, that if this is within the bounds of possibility it should be the remedy, and it should afford a solution of the controversies and the grave troubles which are shown to exist by Senators upon either side of this question, all concurring that there are existing evils, that the evils must be remedied, and the only thing sought being a method of bringing relief to those who are suffering by reason of the evils. It does seem to me that the proposition is well worthy of consideration, and I cannot see that there is any insuperable constitutional objection to the plan that I tentatively suggest.

Mr. Spooner, of Wisconsin; Mr. Daniel, of Virginia; Mr. McCumber, of North Dakota, and Mr. Knox, of Pennsylvania, also spoke, but their addresses had not appeared in the *Congressional Record* when this article was prepared.

Legislative or Judicial Powers Not Involved

BY C. V. McADAMS

Of the Indiana Railroad Commission

IT is my contention that the modification of rates by the Interstate Commerce Commission does not involve the exercise of legislative or judicial power.

In the consideration of this proposition we must anchor to the primary principle, which is the foundation of all legitimate arguments, doctrines and decisions which bear upon the subject. If we lose sight of this controlling principle, we enter the field of speculation, deception and fallacious argumentation.

This primary doctrine, this controlling principle, is the fact that the railway is a public highway, constructed by virtue of a public grant and by private capital, and, as compensation to the private interests which furnish the funds for construction, the law invests such private interests with its operation and control and grants to such interests the right to impose rates for service rendered to the public who use it.

Privilege of Fixing Rates

By giving the carrier the right to fix the rates for service, the law making body placed the carrier's business upon a different footing than that of other occupations. All other business, excepting that of public service bodies, is regulated by supply, demand and

competition, and prices to be paid for goods or labor are a matter of contract between the parties; but as to common carriers, they have the privilege of fixing their rates, which the public must pay, and this right is now uncontrolled, excepting by the requirement of the law that the rates so fixed must be reasonable.

Since laws were first written and civilized men began to recognize the value of organized society, it has been the practice, with the superior authority in the community, State and nation to supervise and control the business, property and affairs of all such persons and bodies as exercise in the community, State or nation the right to exact compensation from the public for any service which the public is compelled to have and which they alone could render. The natural law of self preservation necessitates such control. The experience of mankind justifies its exercise.

It is familiar law that a grant coming from the law making body, creating duties, granting privileges or providing regulations, intended to operate as rules of conduct for public and private observance, are always granted on the theory that they are to be observed and enforced only so long as they meet the requirements and satisfy the demands of the law making

body, and that they may be modified, recalled or new rules enacted whenever the needs of the public or changed conditions make such action desirable or necessary. To this rule there is but one exception, and that is, that no law shall be enacted which violates previously existing contracts between individuals, or between individuals and the State.

It has been settled by the highest legal authority in this country that the right given by law to railway companies to regulate the tolls and compensation to be paid for the transportation of persons and property is *not a contract or law which cannot be abrogated or changed by the law making body whenever the occasion demands or the Congress so wills.* Stone v. F. L. V. T. Co., 116 U. S. 330.

Authority Given by Law

In originally granting authority to the railroad companies to fix the tolls for carriage, the law making body certainly exercised legislative power. It can exercise no other. The authority granted to the carrier was generally in these words: "To regulate the time and manner in which passengers and property shall be transported and the tolls and compensation to be paid therefor."

Acting on this grant of authority, the carriers have made innumerable rates, which their customers have been compelled to pay, and when the conditions justified or discretion dictated, the officers of the carrier have suspended existing rates and adopted new ones to take their place. This the carrier did upon the authority given by law to fix tolls and compensation for service. No lawyer has ever been so bold as to hazard his reputation by asserting that the traffic manager of the carrier exercised legislative power when he made the original or renewal rates, or that he exercised judicial power when he determined that an existing rate was too high or too low and should be changed or modified to meet changed conditions. In the sixty years of railroad rate making in this country, carried on by the carriers and paid by the shippers, it has never been claimed by the shipper or asserted in the courts that the carrier did not have the power to fix rates, or that in so doing it exercises a legislative function which could not be delegated to the company, or that the legislature must fix them in detail, in the first instance. Neither has it ever been asserted by the shipper that a rate once fixed by the carrier became property in which he had such an interest that the carrier could not change the rate without a judicial inquiry being first had to determine that the existing rate was unlawful or unreasonable.

Right to Modify Rates

Now, if you please, the legislature proposes to modify the original grant to the carrier and give to the Commission authority, upon complaint made, not to initiate rates, but to modify and change existing rates made by the carrier, and its authority so to do is challenged upon the ground:

First—That the legislature cannot delegate to the

Commission the legislative function of making rates, but must itself make the rates in the body of the law.

Second—That the carrier has such an interest in its self-imposed rates that they become property and cannot be set aside or modified, until some court says they are unreasonable; and,

Third—That the Commission, by condemning the existing rate, exercises judicial authority with which it cannot be invested.

This argument is predicated upon one true and two false assumptions:

First—That the Congress has authority to fix rates to take the place of existing rates, which is true;

Second—That the Commission exercises legislative power when it fixes rates, which is false; and,

Third—That the Commission exercises judicial power when it condemns existing rates, which is also false.

If the first of these propositions be accepted, the last falls, because they are contradictory and self-destructive. If the Congress has power to directly fix rates to supplant existing rates, and an existing rate cannot be overthrown except after judicial inquiry, then we have the Congress exercising the powers of the judiciary to condemn the old rate and its legislative power to replace it with a new rate. That the power exercised by the Congress in delegating the authority to the carrier to fix rates is legislative, we frankly admit; that it exercises the same power when it vests in the Commission the authority to modify and change those rates must also be admitted, because it comes in the same way, proceeds out of the same sovereignty and is to be exercised upon the same property, for the same purposes and in behalf of the same people, and must be measured by the same limitations.

Delegating Administrative Power

The place where legislative power ceases and the place where the authority of the traffic manager and the Commission commences is therefore the point of cleavage which separates and distinguishes their separate fields of action in rate making. The part performed by the Congress is legislative; that performed by the traffic manager and the railroad commission is administrative. The multitude of considerations necessary to be taken into account in the administration of almost all interests affecting those matters of public concern, about which legislation is enacted, makes it impracticable, if not impossible, for the legislative body to determine the details as they should be finally applied to obtain the results desired. The experience of mankind in matters of legislation of this character has demonstrated that all that is practical or necessary for the legislative body to do is to declare the principle or primary rule which shall control the subject and delegate to some permanent subordinate body, possessing administrative powers and equipped for investigation, the duty of informing itself as to conditions and making application of the primary law, so as to obtain the results intended by the legislative body. That such

is the practice in matters of general legislation of this character is abundantly shown by the uniform practices of the national Congress and State legislatures.

Congress enacts the primary rule when it says that the rates shall be reasonable and fairly remunerative. That is the exercise of the legislative function. It delegates to the Commission, which is an administrative body, the duty of investigation and application; authorizes it, upon complaint made, to apply the rule adopted to the different and constantly changing situations as they are manifested in different portions of the country. A glance at Federal and State legislation shows that almost all laws which deal with the public welfare, public security, public health, public education and professional qualifications are constructed and administered in this manner. Congress and the State legislatures have authorized the courts to make rules to govern their proceedings, and the rules so made have the force of absolute law, yet they are made by the judiciary. (10 Wheat 1.)

Some Cases Cited

The President suspended the free entry of goods under the reciprocity laws, and his act was challenged as legislative, but the courts sustained him. (Field v. Clark, 143 U. S. 648.)

The Secretary of War is given authority to make rules and regulations to control the Government canals, and, after acting pursuant thereto, his act was challenged as legislative, but he was sustained by the courts. (U. S. v. Ormsbee, 74 Fed. 207.)

Under authority from Congress, the Territorial legislatures make laws of all kinds not in conflict with the organic law, and yet the Territorial governments exist only by virtue of legislation enacted by Congress.

Congress fixes the rate of duty on goods imported, but delegates to the appraisers the authority to fix the value upon which the rate is to apply. (Sec. 11. Comp. St. U. S. 1901, p. 1924; 192 U. S. 496.)

Congress provided for the Patent Office and the land department, and for the appointment of chiefs of those departments, and under their administration questions of as much import and greater delicacy are daily determined than become necessary in the administration of the powers proposed for the Commission.

The levy and collection of the public revenues, which is a legislative function, is delegated, almost entirely, to subordinate bodies to determine the value, the necessities, and, in a great many instances, to fix the rates.

Controlled by Legislative Grant

All the State laws for building turnpikes, improving streets and constructing sewers, with the consequent assessments against the abutting property, delegate the power to subordinate bodies for execution, controlled only by the requirement that these improvements be of public utility and that no one's assessments shall exceed the benefits to accrue. The right to fix and exact license fees for engaging in the liquor business, keeping gaming tables, using vehicles on the pub-

lic streets, public peddling and other matters of like character is delegated by legislatures to subordinate bodies, which fix the sum to be paid and enforce the regulations. Boards of health are created to adopt rules of conduct for the health of the public, adopt standards of purity for foods offered for sale, and the regulations so made have the force and effect of law. Other boards, by legislative authority, adopt standards of professional qualifications, fix the rules, prepare questions, hold examinations, and license doctors, teachers, dentists, pharmacists, nurses, veterinarians and lawyers. Still other boards, under legislative authority, determine the standards of education, approve books for use in the public schools and require the attendance of the children. All these different and vital interests are controlled by virtue of the legislative grant fixing the primary rule and delegating the details and important matters to the subordinate body for application and enforcement.

Although the Supreme Court of the United States has not discussed this question with reference to railroad rate making, it has confirmed the many State enactments containing such authority. However, that court upon this question was most probably bound by the decisions of the Supreme Courts of the several States, for the reason that, as applied to State constitutions, such cases do not present a Federal question, and such court, therefore, will not be required to determine this question until it arises upon the Federal legislation brought before it for review. Although this is true as to the Federal Supreme Court, many of the Federal, Circuit and the State courts have considered this question and determined it adversely to the opinions of those who dispute this authority.* A standard author says that thirty-five different and changing conditions may be considered in rate making: "Amount of through and local business; bonded debt; bulk; character of commodity; comparison of rates; competition; consequences of rate changes; cost of production; cost of service; cost of local business; distance; dividend on capital stock; empty cars; fixed charges; former rates; geographical situation; initial expenses; market cost; operating expenses; other articles consumed; population along the line; proportion to local traffic; relative reasonableness of rates; relative amount of through and local business; return loads; revenue; rates *prima facie*; risk; special train service; storage capacity; unsettling of rates; use to the public; value of freight; volume of business; weight." (Snyder's Interstate Commerce Act, p. 196.)

Superior Rights of the Public

The justification for all legislation of this character is found in the superior rights which the public has over those of the individual or combinations of individuals engaged in a common enterprise, viz., corporations and companies. The doctrine which requires that the interests and conduct of the individual shall be held in restraint when they run counter to the safety,

*35 Fed. 874, 24 Fla. 417, 70 Ga. 694, 149 Ills. 361, 155 Ind. 121, 157 Ind. 517.

health, morality, intelligence and equal opportunity of all the people is as old as legislation itself. To secure the health of the community, the legislature, through its administrative body, the board of health, enters my home, removes my child afflicted with some contagious disease, takes it to the pest house, where it dies and is buried without my being permitted to see it. This the board does under its power and authority to fix rules of conduct not specified in the law. Can it, in reason or justice, be said that if this can be accomplished by delegated authority for public protection, that the same power cannot authorize a like board to fix the freight rates on cattle and corn for like reasons? Is the power which so deals with human life, liberty and parental affections to secure the public safety wanting in scope and adaptability to deal with property which exists only by virtue of the public grant and which is devoted entirely to the public use? Does the capacity to exercise the latter power require a higher sense of justice, a superior degree of fitness, a more specifically defined procedure, or a greater guaranty against abuse, than the exercise of the former?

Subject to Public Control

Another like board, by delegated power, fixes the standards of learning and intelligence by the selection of text-books for use in the public schools. The law compels me to send my children to school and use these books. There may be things in the books which I do not believe; they may teach doctrines which I abhor. Yet, to avoid committing a crime and suffering the consequences of fine and imprisonment, I must send my children to this school and use these books. My only escape from this would be in my ability to send them to a private school at my own expense. Can it be said that if the legislature can delegate this extensive and far reaching authority, which we all admit it can and glory in the fact that it does, that it cannot for like reasons delegate to a like body the power to supervise the freight rates on the "hog and hominy" which I must have to feed these same children? My only escape from the freights fixed by the company depends upon my ability to build and operate a railroad of my own.

This same legislature authorizes three commission-

ers or a civil engineer to examine my property and fix the sum which I shall pay for the construction of a public turnpike or street in front of my door for the public and my own use. The sum fixed is beyond my ability to pay, and I must part with my home and make a new start. Can it be said that power may be delegated to do this thing, and it can, and that the same authority cannot delegate to another like body the right to fix the fare which I shall pay upon another highway which returns me to my father's house?

Instances of like character and questions of like pertinency crowd thick and fast upon one who thinks long upon this subject and lead to the conclusion that, so long as railroads are constructed by virtue of public grants, so long will they be subject to the public control in such manner as the legislature wills, providing their property is preserved and their earning power is not depreciated below a just and fair return to the private interests involved. The methods in such matters are well defined, they have been long used, and they cannot now be destroyed or discredited by attaching "legislative" and "judicial" to the terms defining such methods which have for so long and so successfully been employed, in executing the legislative will in the application of the details of legislation, which, from the very nature of our Government, our people and our institutions, could not be developed and applied by the legislature itself.

The legislature having decreed that the rates shall be "just and reasonable and fairly remunerative," we have a basis, or primary law, upon which all the proceedings of the Commission rest. The language of Chief Justice Fuller, in speaking of the power of Congress to delegate to the Secretary of the Treasury the right and power to fix the grades of tea which shall be imported into this country, is applicable here:

"This, in effect, was the fixing of a primary standard, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute. * * *

"To deny the power of Congress to delegate such a duty would, in effect, be but to declare that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted." (192 U. S. 496.)

Mr. Hogg's Reply to Commissioner McAdams

BY H. M. HOGG

Representative from the Second District of Colorado

FREIGHT sent proofs of Commissioner McAdams' Article to Congressman H. M. Hogg, whose views are diametrically opposed to those of the Commissioner, with a request that Mr. Hogg reply to them. The Congressman's article follows:

To the Editor of Freight:

SIR—I have been very much interested in reading the very able discussion of the rate problem by Mr.

McAdams, much of which will be very generally conceded, although the conclusions sought to be established may be subject to very grave doubt.

The proposition he seeks to establish is that the rate making power sought to be conferred upon the Interstate Commerce Commission is neither *legislative* nor *judicial*. We must infer, therefore, and it seems to be his contention, that it is purely *administrative*;

because all functions of government must be classified as either legislative, executive or judicial.

Distinctions That Must Be Maintained

It is well to bear in mind that no one of these divisions of government may invade the domain of the other or assume a jurisdiction belonging to the other. Not only must this be so in the very nature of things, but it has been determined over and over again by the courts, although, it is true, where the line of demarcation is somewhat indistinct. The necessity, moreover, of maintaining these distinctions is quite obvious.

Governments are chiefly concerned in seeing that the thing is done that ought to be done, and that the things that ought not to be done are prevented. It is for the legislative branch to say what the law is—that is, to enact; for the executive to enforce, and the judiciary to construe and apply.

There are acknowledged evils arising from the conduct of the transportation business of the country, but this is no unusual condition, I take it, in human affairs. The man with power will use it not always wisely or justly, and so the necessity to hedge him about for the welfare of others. And so with the railroads. They have great power not always used justly, and hence the necessity to hedge them about. But how?

That legislation is necessary is admitted, but when had, where shall we deposit the power to determine when the railroad has violated the law that we enact? If we say that rates shall be just and reasonable, and a charge is made that is neither, how and where shall this question be determined? To what branch of the Government shall we refer the question as to the justice or reasonableness of any given rate or charge? The learned gentleman says, to the Commission, as an administrative body.

If this be true, then, there can be no occasion for judicial determination of any question connected with the matter, and the action of the Commission must be final. And so it has been held by our courts that the determination of a purely administrative matter is not reviewable. A fraud order made by the Post Office Department will not be reviewed, and many other instances of like nature might be cited.

Commissioner McAdams' Contention

If I gather correctly the full force of the gentleman's contention, it is that the rate making power is purely administrative, unmixed with judicial or legislative functions. If this is true, it presents no question concerning which the courts may take jurisdiction, save, possibly, that the rate established shall not be confiscatory. I hardly think that Mr. McAdams wished to be understood as going to that length. He will most likely agree that along the line somewhere there are rights belonging to railroad corporations that are very like property rights, and that these rights may not be foreclosed without due process of law.

I shall agree most heartily with the gentleman that all corporations engaged in a business wherein the public at large is interested, where the life of the corpora-

tion is given by virtue of statutory enactment, and where the right to levy a toll or charge is given, should be under the control of the power that gave the life, but by control I do not mean the right to destroy.

So long as such corporations observe the law they are, and should be, secure in their rights. In this respect they do not in any wise differ from private persons. But suppose they do not observe the law, suppose a railway corporation exacts an unjust charge or follows an unfair practice. What then? Shall they be proceeded against in any other forum than that fixed by the fundamental law of the land? It would be a strange condition of affairs that the rights and wrongs of individuals shall be, and ought to be, established in our courts, but as to corporations, their rights may be determined out of court and before a political board, charged, as the gentleman says, with merely administrative duties.

Complaint is made that a charge is unreasonable. It is unlawful to exact an unreasonable charge. The law has been violated. How shall this fact be ascertained? Complaint is made that one has committed trespass—he has violated the law. How is that fact to be ascertained? I hardly think that a sheriff or board of commissioners could settle the question of trespass. I cannot agree that this is a matter for administration, until after the courts have exercised their functions. Nor can I see how the rule is different as to public utility corporations. Over thirteen billions of dollars are invested in railroads. There must be some property rights somewhere. These rights must necessarily be entitled to be determined the same as other rights, subject only to the limitations placed upon them by law, and these limitations must of necessity also be the subject of judicial determination.

Supreme Court Decisions

Mr. McAdams says that the modification of rates by the Interstate Commerce Commission does not involve the exercise of legislative or judicial power. I am inclined to think that the Supreme Court of the United States differs from him upon this question. In what is known as the Minnesota case, reported in 134 U. S. at page 418, the court says:

"The question of the reasonableness of a rate of charge for transportation by railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination."

And again, in 167 U. S., page 499, Interstate C. C. v. Railway Co.:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe the rates which shall be charged in the future—that is a legislative act."

Now, what would the gentleman have an administrative board do? Why, ascertain whether a given rate was unreasonable, and fix a rate to be charged for the future which it might judge to be reasonable. When it shall undertake to decide the question of rea-

sonableness it exercises judicial functions, and when it establishes rates for the future it exercises legislative functions.

I hardly think, therefore, in the light of these decisions, that Mr. McAdams will contend that the powers sought to be conferred are merely administrative.

That the whole question is beset with grave difficulties is true; but out of it all I have an abiding faith that a solution will ultimately be had that will result in justice and fair dealing to the people and the railroads, and, above all, that we shall do no violence to the wise safeguards provided by the founders of the Government for the protection of personal and property rights. I am equally sure that, should these rights be intrusted solely to a mere administrative body, responsible to no one save the power that appoints them, we shall have gone a long way from the fundamental

principles of representative government and embarked upon a course that can only result in harm to the people themselves. The strong tendency of the times seems to be to place much that should be the subject of exact legislation into the hands of bureaus and the executive departments of government. The great danger connected with this tendency, in my judgment, lies in the fact that so much is left to the discretion of the individual. I can conceive of no greater power in government than that sought to be conferred upon this Commission. Not only are the interests of the railroads at stake, but the vast interests of the commercial world. I think the history of our country has abundantly shown that the rights and wrongs of its citizens have been safeguarded by our courts; and I have little patience with those who would seek to bring discredit upon them.

Another Plan for Numbering Freight Packages

BY J. M. BLANCHARD

Traffic Manager of Siegel, Cooper & Co., Chicago

The suggestion made by R. A. Kirk, president of Farwell, Ozmun, Kirk & Co., St. Paul, Minn., and printed in the January number of **FREIGHT**, regarding the proper marking of freight, has aroused much interest among traffic managers. Mr. Kirk's paper was supplemented in February by one written by O. O. Hall, traffic manager of the Honeyman Hardware Company, Portland, Ore., and **FREIGHT** feels confident that the contribution of Mr. Blanchard will prove not only entertaining but instructive.

I HAVE been interested in the articles which appeared in the January and February issues of **FREIGHT** regarding the numbering of packages for identification, and thought perhaps the plan which I here employ might prove of interest to others:

FORM USED BY SIEGEL, COOPER & CO., CHICAGO.

FORM 1874. 2M.10-19-06

CHICAGO, 2/10, 1906.

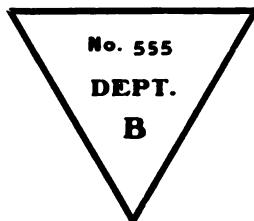
MESSRS. WOOLENS & CO.,
NEW YORK.

GENTLEMEN: For the purpose of expediting our shipments, preventing packages from going astray, and otherwise saving delays and annoyances, please observe the following

Important Shipping Directions

On Order No 300, Book 45, Dated 2/10/06

Mark all packages for transportation containing this shipment:



N. B.—(If shipment requires more than a single package, mark additional packages "dash one" [—1], "dash two" [—2], etc., after the above serial number.)

Ship Via **MERCHANTS DESPATCH R. R.**

Care **MICH. CENT. LINE**

Forward **BILL OF LADING** with invoice.

Respectfully,

SIEGEL, COOPER & CO.

Mdse. Due:

¼—Apr. 1, '05

¼—Sept. 1, '05

J. M. BLANCHARD,
Traffic Manager.

On account of the large variety of merchandise which we handle, shipped from every point of the compass and many shipments intended for different departments from same consignee, it became necessary to devise a scheme which would cover every exigency, and we have found our system answers the desired purpose.

With each and every order is furnished routing instructions supplied by the traffic department, as per blank form (copy inclosed), and a record is kept of such orders in a register. The package numbers run consecutively, and are never duplicated, forming a ready reference to the particulars of each order.

To illustrate: Suppose an order was forwarded as ten cases; the triangle and given number 555 is marked on each case, and, in addition to basic number 555, 1 is marked on first case, 2 on second case, and so on respectively.

In the event that case 555— is seven checks short upon arrival, no matter when or where it may subsequently be found, by referring to the register the name of consignor, order number, department, route, etc., is readily ascertained, and prompt action is taken to supply this information to all carriers interested.

A further advantage shows in the facility with which any portion of an order may be routed at its designated time. The case mark (555) refers always to a specific order, no matter how many shipments or diversified routings the order covered.

Our greatest trouble is experienced in educating Eastern shippers to observe instructions explicitly, but when fully complied with we obtain the very best results.

Broad Lines Are Needed for Rate Legislation

BY F. W. CRANDALL

Of the Travelers' Protective Association of America

An Address delivered before the Protective Union of New Orleans

Two years ago, at our Springfield convention, this association adopted a resolution favoring more effective rate legislation, and at the time President Roosevelt issued his memorable message of 1904, demanding that the public highways be open to all on equal terms, a committee from this association was on its way to Washington to urge upon the President the very action which he had taken.

The position of our association on this important matter, briefly stated, is that we demand equal rights for all.

Before attempting to discuss this matter I think that it is important that we establish a common ground from which we may proceed to evolve a plan.

Let us then divide, somewhat arbitrarily perhaps, the people who are actually interested in the rate problem into three great classes:

Three Classes

First, those who believe that a railroad's obligations begin and end with the stockholders.

In this class we may expect to find the railroad magnates, whose names are familiar to the public; the 1,300,000 employees, to the paying of whose salaries is devoted 40 per cent. of the two billion dollars gross earnings of all the railroads of the United States, the insurance companies, savings banks and educational institutions, which, it is estimated, own about one and one-half billion dollars, or about one-eighth of all the railroad stocks and bonds in the country, and the great multitude of legitimate investors in these stocks and bonds.

In the second class I would place those who, going to the other extreme, demand that the railroads shall be operated primarily for the public, with small regard for the rights of the stockholders.

In this class we may expect to find many of the shippers, who, having suffered loss from practices fostered by reckless railroad management, resulting in discriminating rates and rebates, think the entire system awry and demand its removal; the theorist, whose ideals may not be realized this side of the millennium, and, unfortunately, a class of politicians who find in the prejudices of the people an easy way toward a notoriety which they mistake for fame, and whose handiwork is seen in the drastic laws of State legislatures, which, like the maximum rate law of the State of Missouri, are so oppressive as to be confiscatory, and are nullified as soon as they reach the courts.

In the third class we find the great middle class, which in this of all countries must, and fortunately may, be depended upon to maintain an equilibrium by

recognizing that the solution of great problems like these must be along lines of square dealing, which will maintain and not destroy property, which recognizes the right of every man, regardless of social position, to a liberty which is a long ways from being license.

In this class we may expect to find the great mass of fair minded men, which I am satisfied embrace the bulk of this audience, who see in the railroads of this country one of the greatest civilizing powers of our age; the largest employer of highly paid labor in all our list of great industries; the instrument by which the products of the East and the West, the North and the South, are exchanged, and an instrument which has bound together the most conglomerate mass of people in the world into a nation, honest, industrious, patriotic and without a peer.

In this class I place our great leader, Theodore Roosevelt, President of the United States, the most active and consistent of all of the great reformers, and in this class it should be our constant effort to keep the T. P. A.

If I should attempt to state the position of this class upon the rate question, I would say that we believe that our opposition should be against the abuse of the power of the railroads, rather than against the railroads themselves.

Recognizing that this power has been selfishly used in violation of the essential truths which make for the good of all of the people, and that the possibilities of further misuse are a menace to our institutions, we demand an elimination of the evil rather than the destruction of the property.

Following this broad statement of our belief, let us inquire into the situation, that we may see the occasion for the legislation which we desire.

Broader Lines Needed

It would seem with many that the principal reason is the fact that this is an era of remarkable prosperity for the railroad companies. Undoubtedly they are in many cases accumulating large surpluses and paying liberal dividends. Stocks in some cases are worth many times their par value, but are these facts in themselves sufficient upon which to base our demand?

I, for one, do not propose to deny the railroads a share in the general prosperity, nor the right to a reasonable profit. To be consistent our demands must be along lines far broader than this.

If you don't read FREIGHT regularly, you're handicapped in your business.

Subscribe for FREIGHT; \$3.00 a Year.

We should remember that our plea is not only for rates which are reasonable, but for rates which are just as between individuals and communities.

The justice of a rate as between individuals touches at once upon that sore spot in our railroad economy—that of rebates. When we speak of rebates we at once think of the Standard Oil Company and the Beef Trust, but from evidence brought to our notice through the daily papers, we see that these rebates, large though they doubtless are, are in reality only a small part of the total.

I know of no more direct way of presenting this fact than by reading to you a statement made by Judge H. C. Caldwell, of Little Rock, Ark., who was for thirty-nine years on the Federal Bench of the United States, and who states:

Forms of Favoritism

"From my experience on the bench I know that rebates and other forms of favoritisms are general among American railroads. I had striking proof of this while conducting the Atchison, Topeka & Santa Fé receivership. After appointing the receivers of this road I allowed them to name the operating head, and they settled upon D. S. Robinson. Immediately following Mr. Robinson's appointment I called the receivers and their officials together and told them that while the road was in the hands of the court I expected it to be operated in conformity with the law. I explained that I meant no rebates should be granted on any conditions, and stated plainly that in the event the law was violated in the slightest particular, the violation would cost the receivers and Mr. Robinson their positions. About five months later Mr. Robinson made a trip from Chicago to St. Louis to see me and to plead for the rescinding of the order against rebates. He said to me: 'Before the receivership the Santa Fé was securing 26 per cent. of all through freight out of Chicago destined for points west of the Missouri River. As a result of adherence to your order the road is now getting but 6 per cent. of this freight. Every competing road is granting rebates to shippers. Your order is not only ruining the business of the Santa Fé, but it is ruining my reputation as a railroad official.'

"Of course, I told Mr. Robinson there was no help for the unfortunate condition as long as the road remained in the hands of the court. The incident served to show under what unlawful conditions the big railroads of the United States were operating."

I am reminded that these are conditions which existed before the Elkins law went into effect. Since then the situation has materially improved.

Admitting the truth of this, we still must conclude, from actions now pending in the courts against many of our largest railroad systems, that this practice still prevails, and in the guise of a division of rates with terminal railroads, many of which are in reality but the switches of large manufacturers, there is still concealed one of the most pernicious forms of rebate.

Probably there is no form of discrimination so hard to control as that presented by the use of free transportation. This is particularly pernicious when it is used by the railroad companies to influence members of the State Legislature.

Leaving the question of discrimination as between individuals, let us now consider the justice of rates as between communities. That the railroads have failed to keep the rates in touch with changed conditions, and that this is responsible for many cases where rates are not just as between sections, is shown by comparison of the rates from St. Louis and Chicago to points in Alabama and Georgia, with those of Eastern markets.

The present rates into this section were established in the 70's, when the territory east of the Alleghenies was looked upon as a manufacturing district and that west as an agricultural district. It was claimed and conceded that concessions should be made to the Eastern and New England States, owing to the importance of their manufactures to the Southern and Southeastern territory.

Since then the total manufactured products of the States east of the Alleghenies has increased from \$2,688,000,000 in 1870 to \$6,559,000,000 in 1890, an increase of 243 per cent. In the territory west of these mountains the increase was from \$1,068,000,000 in 1870 to \$4,311,000,000 in 1890, or over 400 per cent. At the same ratio of increase in the year 1910 the amount of manufactures in the two sets of States will be about equal. *The rates prevailing during this time have remained practically unchanged.*

Examination leads me to believe that there is no well defined system of establishing rates. In fact, that nearly every rate of importance is a compromise between competitive forces fiercely antagonistic and wholly selfish. Take the situation in the Southeast. I know that the Western railroads have been trying for the last ten years to reach an agreement with the Eastern roads which would permit of a more equitable tariff.

We Have This Situation Before Us

The inability of these railroads to agree among themselves is largely responsible for the existing conditions. The necessity put upon a traffic man to make a showing of earnings for the property under his control, particularly the conditions which make necessary earnings on the fictitious valuation of \$13,000,000,000 worth of stocks and bonds, which represent only about \$8,000,000,000 in actual value, together with the conflicting laws of the country, make the establishing of rates a proposition beset with tremendous difficulties.

Imagine what it must be to endeavor to establish rates and tariffs which will not only come under the regulation of the national laws concerning interstate traffic, but must also be more or less in accord with the varying rate regulations of over forty-five different States, and you can see what a condition we have.

The railroads apparently are powerless to control the situation themselves, and there is no efficient power to secure a better condition.

Assuming that our premises are correct, it would seem that we have this situation before us:

First—A consolidation of railroad interests, which has made possible an increase in transportation rates and which permits of further increase.

Second—The practice of rebating in one form or another still exists.

Third—Discrimination in rates between communities.

Fourth—The railroads either cannot or will not remove these conditions.

Having stated the difficulties, the task remains to provide the solution.

Legislation Not a Cure-All

I am not a believer in the entire efficiency of legislation as a panacea for all of our ills, but it would seem that when we find cases where the railroads cannot agree among themselves as to what a reasonable rate is, and where we are forced to accept in lieu of that reasonable rate a compromise which falls short of satisfying either the shipper or the carrier, we must have a body with sufficient power to act as an arbitrator.

I believe, therefore, that there must be an increased supervisory power over all carriers engaged in interstate business. I believe that this power may with propriety be vested only in the Government, and that it should be scrupulously used to prevent injustice to both the corporation and the citizen.

It is well stated in the decision of Chief Justice Bradley that "The superintending power over the highways and the charges imposed upon the public for their use must always remain in the Government."

Justice Harland, speaking for the Supreme Court of the United States (169 U. S. 546), states this case with absolute fairness as follows:

"It cannot be assumed that any railroad corporation, accepting franchises, rights and privileges at the hands of the public, ever supposed that it acquired, or that it was intended to grant to it the power to construct and maintain a public highway simply for its benefit, without regard to the rights of the public. But it is equally true that the corporation performing such public service, and the public financially interested in its business and affairs, have rights that may not be invaded by legislative enactment in disregard to the fundamental guarantees for the protection of property. The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the service rendered by it. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

It is estimated that 90 per cent. of the cases brought before the Interstate Commerce Commission in the past have been settled by arbitration.

Power of Rate Making

Apparently this may only be accomplished by giv-

ing to this commission or court the power to nominate a reasonable rate, which shall prevail in place of the rate declared to be unjust and unreasonable. Around this provision is being waged a fight which is stirring the country as no other great question since the Civil War has stirred it.

Section Six of the Townsend Bill is a fair example of proposed legislation along this line. It gives to the Commission the power and makes it its duty to declare and order what reasonable maximum rate shall be charged, or what classification, regulation or practice shall be imposed or followed in place of that declared to be unreasonable, unjustly discriminatory or unduly prejudicial.

It is contended by the railroad interests: That this act is in reality the taking from the owners of the property the right of control, since it is the fixing of the compensation which they may receive for the services which they may render.

That the Government has no more right to interfere in the management of their property than that of any other firm or corporation doing interstate business.

That the fixing of rates is too complicated a proposition for any commission to undertake, and may alone be handled by committees of their own appointment.

That the commission being a body appointed by the President, is political, and that politics may enter into its decisions, to the detriment of the case.

That rates are now neither unreasonably high nor unjustly discriminatory, and that, therefore, there is no need for the drastic laws proposed.

That rate legislation means a reduction in rates and a consequent reduction in the expenses, particularly in the payroll of the employees.

Various Contentions

The advocates of rate legislation, on the other hand, contend that the purpose of their legislation is not to interfere with the management of a property so long as the charge for service rendered is reasonable and just, and point to the fact that the commission may only act after formal complaint has been made, so that it cannot of its own volition institute a general plan of rate revision.

They also call attention to the fact that it is impossible to curtail the earnings of a road to any appreciable degree without destroying the value of the property, and that the courts have decided frequently that any act which creates a condition whereby the value of any man's property is destroyed is confiscatory, and, therefore, unconstitutional, since it is taking property without due process of law.

Such being the case, the carrier is fully protected from unwise or unfriendly legislation, and it is the consumer, producer and shipper alone who are unprotected.

The right of the Government to interfere in matters pertaining to rates is provided by the Constitution, which stipulates that Congress may regulate commerce

between the States and to the often reiterated statement of the Supreme Court in effect that the control of the highways must always remain with the people.

The fear that the commission will be influenced by politics must be considered with the character of the men likely to be appointed. The Supreme Court of the United States is open to the same objection from the same point of view.

The complaint is not that rates are too high, generally speaking, but in many cases that they are too low to certain individuals or interests, and that this constitutes a discrimination in rates, which is detrimental to the best interests of all.

Varied and Contradictory Powers

To me the most serious objection to the rate making clause is not in the fact that the power vested in the commission is so great as that it is so varied and contradictory.

The commission is expected not only to investigate, and, should occasion arise, to prosecute, but, having investigated and prosecuted, to then be in the proper frame of mind to assume the judicial function and to decide not alone whether the present rate is reasonable or not, but what will be a reasonable maximum rate for the future. Human nature does not change, and it would seem to be unreasonable to expect any man or body of men to be equal to duties so antagonistic.

The Grosscup plan, having for its object the creation of a body to investigate and prosecute and another body to judge, is one whose reasonableness appeals to my judgment, except that it also forces contradictory powers upon the transportation court, since by the provision of this act the court would nominate the reasonable rate to apply for the future.

[Mr. Crandall is in error here. Under the Grosscup plan the court does not "nominate the reasonable rate," nor does it assume any legislative function; but it finds what is the reasonable rate and enjoins the carrier from charging more than this reasonable rate.—Ed.]

In the opinion delivered by Mr. Justice Brewer in the Maximum Rate Case (167 U. S.), it is clearly set forth that the making of a rate is a legislative function and not a judicial one, and it is conceded that no court may legislate.

That there will be rate legislation at the present session of Congress would seem to be an assured fact, but that any legislation will be had which will at once and for all times settle the dispute between the shipper and the carrier is not possible.

When the People of This Country Awake

When the people of this country awake to the fact that a permanent solution of traffic problem lies not so much in legislative enactment as in themselves, and may be obtained by them through the development of the interior waterways of this great country, thereby securing at once an economical method of transportation for great commodities, and a competition which

will regulate railroads, the problem will be nearing a solution.

The position of this association is set forth in a resolution adopted at the last national convention:

Resolved, That we approve of the action of the President of the United States in urging upon Congress the necessity for legislation which will insure equal rights to the carrier and the shipper, while providing the corrective measures for the abuse of private car and terminal railroad association, or for the excessive delays in paying claims for loss or damage of goods in transit, or for any form of rebate or undue preference given to one shipper over another. Be it further

Resolved, That we urge upon the President of the United States that he use his influence to secure from Congress legislation having in view a thorough and comprehensive plan for developing the internal waterways of this country, so that it may be possible for them to become of value, not only in transportation of such of the great commodities as may be able to take advantage of the opportunities offered, but as affording competition in rates charged for the transportation of these commodities by the railroad.

The people of New Orleans cannot be indifferent to the question of the development of the Mississippi River and its tributaries so as to allow free and uninterrupted travel, nor to the question of a ship canal from Chicago to St. Louis, which will turn the stream of travel now going east through the Great Lakes, and which for months at a time is discontinued owing to the obstruction incident to winter, to the South, where uninterrupted service may be had all the year.

Such a development means that this city will be the greatest export market of the United States, with all that this implies.

Add to this the Western markets opened by the Panama Canal, and we have a vista of future achievements which must appeal to every man of patriotism and ambition.

The Travelers' Protective Association needs you, as representative men of this city, to give us strength, character and standing in the community; but you need us and the active, aggressive force of 30,000 commercial travelers which lies behind this association.

Allis-Chalmers Steam Turbines

Coincident with the completion of the new terminal station and office building that John I. Beggs has had constructed for the Milwaukee Electric Railway & Light Company, of which he is president, a contract has recently been placed by him with Allis-Chalmers Company for the installation of three Allis-Chalmers steam turbine generating units, each of 1,500 K. W., sixty cycle, three phase, 2,300 volts, to operate under steam pressure of 150 pounds.

There are included in this contract two 1,500 K. W. motor generator sets to deliver direct current at 300 volts, each consisting of a direct current generator direct coupled to a three phase, 60 cycle synchronous motor.

The electrical machinery for this installation is to be constructed at the Bullock works of the Allis-Chalmers Company in Cincinnati. The turbines will be built in the large West Allis shops.

FREIGHT

THE SHIPPERS' FORUM

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WE maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from subscribers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers and carriers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically. If the complaint is well founded, upon request, **FREIGHT** will mediate between the complainant and the carrier.

Subscribers who do not receive their copies of **FREIGHT** promptly each month will oblige the publishers by acquainting them with that fact without delay.

WHILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

THERE is no toiler in the realm of human endeavor to whom a word of encouragement is not an incentive to do better work.

FREIGHT for two years has labored in a hitherto unexplored field. During this time we have seen freight transportation questions rise from comparative obscurity to become the paramount issues of the day.

Early in March we sent the following outline of the scope and purpose of **FREIGHT** to each subscriber, and asked for suggestions and opinions which might result in the betterment of the magazine:

FREIGHT undertakes to deal with all matters that concern the shipping public in its relations with transportation companies on either land or water. Its scope also extends to the correlated businesses of the telegraph and the telephone and other quasi-public utilities.

Its purpose is to print news, opinions and suggestions that bear upon subjects of direct interest to shippers and common carriers, to aid in the maintenance of an equitable understanding between these inter-dependent parties and, above all, to assist shippers in cases where there has been discriminative action against them by common carriers.

FREIGHT recognizes the transportation service of the United States as an important branch of political science. Therefore much attention will be paid to the Acts of Congress, proceedings before the Interstate Commerce Commission and State Railroad Commissions, and actions in both State and United States Courts having a bearing upon the subject.

Changes in classifications and tariffs will be noted, and no effort or expense will be spared to keep subscribers to **FREIGHT** thoroughly and accurately informed upon all transportation matters of the day.

We are not vainglorious, but we assert with confidence that no publication in the United States has a more substantial class of readers than **FREIGHT**. They are distributed through every State in the Union and include not only shippers, carriers and traffic managers, but also university professors and students, statesmen, lawyers and newspaper writers.

In these hustling times, when every man, whether in business or professional life, finds duties pressing upon hours, it was perhaps a little presumptuous on our part to request readers to devote even a few minutes to a discussion of **FREIGHT**; but in extenuation we wish to say that the liberty which we took has been more than justified by the number and character of responses received from men who are willing to aid a publication which has for its purpose the general public welfare.

We print a few excerpts from letters, selected at random from the many received, which show how **FREIGHT** is regarded by our subscribers:

EDWIN A. WALTON, OF THE BRONSON-WALTON COMPANY, CLEVELAND, OHIO.—The writer takes a great deal of pleasure in reading your magazine as it comes to him. We regard it of great value in keeping us thoroughly posted in matters of shipping and feel that it stands for the highest interest of the great body of shippers and the public as well as, in the long run, of the railways themselves.

HERBERT BRADLEY, EXPORT AGENT, NEW YORK.—I would say that I have taken great interest in reading FREIGHT and I think it is a very instructive magazine to all shippers, more especially so as regards the items covering decisions of the various courts on freight questions. If I made any suggestion at all it would be that you watch this end very closely and report in detail matters of this description.

P. E. PECK, SECRETARY AND TREASURER FLORIDA FREIGHT CLAIM AGENCY, JACKSONVILLE, FLA.—FREIGHT is certainly giving its subscribers their money's worth, in my opinion, and the publication should receive their hearty support.

C. S. BARKER, TRAFFIC MANAGER, E. C. ATKINS & Co., INDIANAPOLIS, IND.—We have no hesitancy in saying that we believe FREIGHT to be the best publication now issued for general information to shippers from both the standpoint of the shipping interests and the railroad. Our observation is that in reading the articles (and we have read them carefully in each issue) that the object of FREIGHT is to give an impartial presentment of both sides of the question. We believe it will be greatly to the advantage of every up to date shipper to subscribe for the same. We appreciate the fact that as subscribers we are at liberty to use the several departments of inquiry, mediation, etc., and if the occasion should arise we shall avail ourselves of the privilege.

H. L. STANTON, SALES MANAGER, E. BEMENT'S SONS, LANSING, MICH.—We regard FREIGHT as the most comprehensive and valuable publication of its kind issued today, and we could not suggest any subjects of interest to the shipping public that are not treated fully in its columns.

G. A. WRIGHTMAN, TRAFFIC MANAGER, SEARS, ROEBUCK & Co., CHICAGO, ILL.—The information condensed in your monthly numbers it would be practically impossible for any busy man to obtain from any other source. Important matters, such as legislation, recent court decisions, changes in classifications, etc., it is sometimes possible to obtain from magazines and daily papers, but from these sources I am never able to obtain anything more than an outline, which is decidedly unreliable. FREIGHT gives us highly important information in a condensed, complete and reliable form. I have become so used to reading it and depending upon it for certain sources of information that, although it is a recent development in the transportation world, I would be at a loss to know where to turn for the help I get from it if it should fail to come to me regularly.

M. E. APPELBAUM, TRAFFIC MANAGER AMERICAN METAL COMPANY, NEW YORK.—FREIGHT assists me greatly in following up matters pertaining to freight discussions and decisions, and I consider it a very valuable adjunct to any library.

WILLIAM I. KOLLER, SECRETARY ROCKDALE POWDER COMPANY, YORK, PA.—We consider FREIGHT a very good publication and one from which its subscribers may benefit. We trust its future may be successful, and believe you can make the publication one of the most useful and best in the country.

ANTHONY LUCIK, CINCINNATI, OHIO.—I wish to state that we are very much pleased with your publication. I believe that your work has done and will do more for shippers than we now realize.

GALE B. SMITH, TREASURER THE F. A. AMES COMPANY, OWENSBORO, KY.—We have always read your publication with great interest and have obtained many results from so doing.

E. K. SIMONS, FREIGHT DEPARTMENT THE DR. MILES MEDICAL COMPANY, ELKHART, IND.—FREIGHT, I believe, although in its infancy, has already obtained a high standard of efficiency. Dealing with all questions concerning transportation, the information that it contains regarding this complicated subject should without difficulty place it in the hands of all shipping industries both large and small.

O. F. BELL, TRAFFIC MANAGER CRANE COMPANY, CHICAGO, ILL.—I am pleased to have the opportunity of expressing my high appreciation of FREIGHT. I look forward to each new number with pleasant anticipation, as I find it always contains information on matters of interest to me which can be obtained nowhere else; and the subjects are treated from a standpoint entirely different from that which obtains among the railway trade papers. The careful reading of your magazine is an education of itself in railway transportation. I have no suggestion to make as to how FREIGHT can be improved. To my mind it covers the field pretty thoroughly.

L. ISSELHARDT, TRAFFIC MANAGER NATIONAL BISCUIT COMPANY, CHICAGO, ILL.—FREIGHT has previously been accorded my personal approval by way of subscriptions from both my New York and Chicago offices. Its editorial pages, especially, are worthy of more than ordinary comment. Every disposition has been shown, thus far, at least, to accord fairness to both the railway fraternity and commercial interests. The neutrality shown and impartially displayed, so far as pertains to discussions along broad and comprehensive lines, is commendable.

E. P. MUELLER, MILWAUKEE, WIS.—We have read with interest several issues of FREIGHT, and find it to be thoroughly reliable in every respect and worth many times the cost of the subscription to any shipper of importance.

EMIL L. FUHMANN, WISCONSIN BRIDGE & IRON COMPANY, NORTH MILWAUKEE, WIS.—We are read-

ing your valuable publication thoroughly, and find that it contains some very valuable information, and we think no concern doing any amount of shipping ought to be without it.

R. A. GELERESS, JR., THE BROWN-HURLEY HARDWARE COMPANY, DES MOINES, IA.—FREIGHT is of great use to us, and we have obtained some very valuable information from its pages. We believe that the subscription price is one of the best investments that a business man can make.

C. R. GARRETT, TRAFFIC MANAGER POWER & MINING MACHINERY COMPANY, CUDAHY, WIS.—We are very much pleased with FREIGHT, and it has enlightened us considerably in the way of handling freight traffic matters.

J. F. STROMBECK, AUDITOR FREIGHT EXPENSE BILLS, MOLINE, ILL.—I am very well pleased with FREIGHT. I do not have time to read it as much as I would like, but I have already received information through its columns which has more than paid the subscription price. I am fully satisfied that it is a good thing, and all traffic men as well as business men should become subscribers.

T. F. McCLAREN, MANAGER SALES AND TRAFFIC DEPARTMENT WESTERN STATES PORTLAND CEMENT COMPANY, INDEPENDENCE, KAN.—We have read the editorials and general news items in FREIGHT with much interest, and certainly feel that the field you are covering has many opportunities, and we predict great success for your publication. We feel it is worth many times the price charged for it, and shall continue our subscription when the present one expires.

GEORGE J. CRAM, SECRETARY PONTIAC BUGGY COMPANY, PONTIAC, MICH.—We are receiving and reading with interest your publication, FREIGHT, and we expect to benefit by the articles and editorials therein.

WOOLSEY-STAHLL HAY COMPANY, KANSAS CITY, KAN.—We thoroughly appreciate FREIGHT. The departments of Complaints and Legal Inquiries interests us very much. We believe the agitation which can only be made through such mediums as yours will eventually result in better freight laws. The trouble has been heretofore that "what is everybody's business is nobody's business," and it has been a difficult matter to wake the people up.

JOHNSON & SON, GOSHEN, IND.—We are much interested in FREIGHT, and when occasion arises shall use your columns for information.

G. E. DAVIS, FRANCIS E. BEIDLER & Co., CHICAGO, ILL.—We have found FREIGHT to be of great value to us. It practically covers everything pertaining to traffic matters, and it is also an enlightenment as to what is being done throughout the country on traffic matters in general.

E. P. SCHANZ, SUPERINTENDENT-TREASURER NOVELTY GRAY IRON FOUNDRY COMPANY, DALLAS CITY, ILL.—We feel that we have been benefited through our

subscription to FREIGHT and are always looking forward to the next issue.

J. S. GOLDSMITH, FIRST VICE PRESIDENT SCHWABACHER BROTHERS & Co., SEATTLE, WASH.—I can heartily recommend FREIGHT to every shipper in the country. It contains just the right kind of information for the shipper, and is about the only medium of exchange between shippers that I know of.

JOHN T. PLUMMER, SECRETARY DENVER FREIGHT BUREAU, DENVER, COL.—The writer has been under the impression from the inception of your enterprise that FREIGHT has fulfilled most acceptably its mission, and I do not discover that you are neglecting any feature of the work that should be taken up by your publication.

L. HAYMANN, REPRESENTING HUGO FORCHHEIMER, NEW ORLEANS, LA.—I beg to say that I find FREIGHT very good in every department.

F. H. LAZENBY, SOUTHERN FIRE BRICK & CLAY COMPANY, CHICAGO, ILL.—FREIGHT has proven highly satisfactory and useful to us. We find it very interesting, and hope to take advantage of the departments devoted to the discussion of various matters at an early opportunity.

H. C. SCOFIELD, SECRETARY AND TREASURER C. H. & E. S. GOLDBERG, NEW YORK.—We are more than pleased with FREIGHT and esteem it very highly. It very satisfactorily fills a long felt want, and, judging from the improvement shown in the past, we expect great things of it in the future.

F. W. BRASS, TRAFFIC MANAGER CARSON, PIRIE, SCOTT & Co., CHICAGO, ILL.—I have found a great deal of very excellent and useful information in FREIGHT, and should any question arise I intend to avail myself of its departments.

ROBERT MEYER, PRESIDENT MEYER BROTHERS COFFEE & SPICE COMPANY, ST. LOUIS, MO.—We are favorably impressed with FREIGHT.

E. C. WILMORE, TRAFFIC MANAGER THE J. W. SEFTON MANUFACTURING COMPANY, CHICAGO, ILL.—We find a great deal of valuable information in FREIGHT—information which is useful to any shipper and which would be hard to get from any other source.

HARRY AINSWORTH, SECRETARY AND TREASURER WILLIAMS, WHITE & Co., MOLINE, ILL.—We think FREIGHT is a very able magazine.

THOMAS C. MOORE, FREIGHT TRAFFIC MANAGER, CHICAGO, ILL.—I appreciate FREIGHT very highly.

H. S. GRIMES, PORTSMOUTH, OHIO.—I always read FREIGHT with a great deal of interest. There is no question that the information derived from its columns is very beneficial to the shippers and to all persons interested in railroads and business of almost any character. The State news published in FREIGHT more than compensates one for reading it. The journal has become almost a necessity to us. We depend upon it

for information that we need and which we can usually get by perusing it.

F. W. CRANDALL, CHAIRMAN NATIONAL RAILROAD COMMITTEE THE TRAVELERS' PROTECTIVE ASSOCIATION OF AMERICA, ST. LOUIS, MO.—I regard your publication as one of essentially practical value to the business men of this date. It gives in a clear and concise form much information which could not be obtained otherwise without great loss of time and inconvenience. One thing which impresses me with FREIGHT is the evident intention of your management to be entirely fair on all questions. We get both sides in your magazine. I shall be glad to avail myself of the departments which are open to subscribers should occasion warrant it.

NEUSTADT AUTOMOBILE & SUPPLY COMPANY, ST. LOUIS, MO.—It is with great pleasure that we express our appreciation of FREIGHT, and particularly the policy which dictates it. We believe that you are instrumental in righting a great wrong which we felt severely, namely, the discriminations against us on Pacific Coast shipments. You will remember that we had this matter up with you some time ago, and you published a letter or two written by us and referred to it in other ways, with the result that the last committee meeting in Los Angeles settled the difficulty in a proper way. We are not slow to accord you credit and recognize your efforts in this direction. We certainly wish you the greatest possible success, and we unhesitatingly say you deserve it.

R. J. FINE, SALES AGENT ARKANSAS LUMBER COMPANY, ST. LOUIS, MO.—We consider FREIGHT the most satisfactory medium for the general information of business men, pertaining particularly to railroad matters, published, and as the writer has had some little personal experience along transportation lines your articles are doubly appreciated.

J. E. LINDE, PRESIDENT J. E. LINDE PAPER COMPANY, N. Y.—We are very glad to attest our thorough appreciation of your magazine. It invariably contains matter of vital interest to every shipper. Your articles are concise, and therefore adapted to the busy merchant. Your Legal and Grievance departments are particularly timely and practicable, and should receive the cordial approbation of every subscriber.

JOHN M. GLENN, SECRETARY ILLINOIS MANUFACTURERS' ASSOCIATION, CHICAGO, ILL.—FREIGHT has proven itself to be a very valuable publication. I do not always agree with its policy, but it would have no value if it did not have independence. It certainly is willing to give its readers a hearing. I hope it has a large measure of success.

W. E. McEWEN, PEERLESS TRANSIT LINE, CLEVELAND, OHIO.—We consider FREIGHT a very good publication, and it is carefully perused each month, especially for legal decisions, complaints, etc.

W. N. WHITE & Co., NEW YORK.—FREIGHT is a

publication that should reach all receivers and shippers. It is devoted to their interests, and there is a tendency in all kinds of business now to have specialists. There are very few publications which can enter into this question of freight and shipping with the purpose of advising inquirers what should be done. Therefore I think your magazine is a step in the right direction. We think your department of Mediation is excellent. Contracts sometimes lead to disputes, where both parties think they are right. If these parties would agree to state their cases to an experienced person, agreeing that the loser would be bound by the decision, such disagreements might be closed up in a few days instead of stopping business for a long time. As a specialist you naturally have more knowledge of what is required than many attorneys who are not familiar with transportation matters.

GEORGE SCHRAEDER, SECRETARY JAMES S. KIRK & Co., CHICAGO, ILL.—We assure you that we appreciate FREIGHT very much.

JOSEPH A. BUCK, THE SNYDER & BLANKFORD COMPANY, BALTIMORE, MD.—We find FREIGHT very useful and the news printed in such shape that it is easily read. We will avail ourselves of your different departments whenever the opportunity offers.

JAMES TRAVERSE, TRAFFIC MANAGER THE NATURAL FOOD COMPANY, NIAGARA FALLS, N. Y.—I believe FREIGHT is a most useful publication for shippers and should be on file in every shipping department.

REGAL SHOE COMPANY, EAST WHITMAN, MASS.—We have found your publication of interest to us. Many of the articles it has contained have given us an insight into methods of transportation.

GEORGE ESSELMANN, THE GEORGE ESSELMANN COMPANY, BALTIMORE, MD.—FREIGHT has been of much interest to us. Its editorials contain information both desired and beneficial. As long as it remains as valuable as it is today we shall continue our subscription.

ROBERT McLEAN, BALTIMORE, MD.—I find much of interest in FREIGHT and think you cover the ground very comprehensively. I shall be pleased to take advantage of the departments to which you are kind enough to call attention should occasion arise.

INNIS HOPKINS, TRAFFIC MANAGER NATIONAL CANDY COMPANY, ST. LOUIS, MO.—Some time ago we wrote to you, stating that in our judgment FREIGHT seemed to meet the requirement of the shipping public, and we now have no reason for changing our opinion.

SCOTT PAPER COMPANY, PHILADELPHIA, PA.—We have found FREIGHT to be of very great value to us.

T. S. DAVANT, FREIGHT TRAFFIC MANAGER NORFOLK & WESTERN RAILWAY COMPANY, ROANOKE, VA.—I have read each issue of your magazine for some time and am of the opinion that it is doing a good work.

THE parties in the Senate, the rate bill considered, are four in number: First (and we mention them in the lead for no particular reason), the standpatters—those who want no governmental regulation or control whatever; second, the Hepburn-Dolliverites—those who want the greatest amount of Commission interference in the business of common carriers; third, the reviewists—those who want the terminations of the Commission fully

**Why Not
Get Results
Directly?**

reviewed by a court, and, fourth, the mild reviewists—those who want only the minimum amount of judicial interference. It needs be said that no one of these parties is now strong enough to carry the day. There is little or no prestige for the bill, because it passed the lower branch almost unanimously. The Senate believes that it passed the House, not by reason of its intrinsic value, but under the Executive club.

The chances of the views of any one of the parties prevailing are very slim. The non-regulators are very quiet. The Hepburn-Dolliverites are in evidence and heard on the slightest provocation. The reviewists are very energetic, both those in favor of broad powers for the courts, on constitutional grounds, and those in favor of limited review, on what they term grounds of efficiency of the statute.

That a bill, if one is to be passed by the Senate, must be a compromise is certain, for the lines are clearly marked and the several views are inharmonious. At least three of the parties admit there must be a judicial review. All acknowledge that it must exist, either in broad or limited sense, directly given in the statute or by implication; that somewhere a judge and perhaps a jury must act as cooks to the railroad broth. So the real gravamen of the matter is when and how much court and jury, how much judicial machinery, shall there be.

Since a court is necessary, why not get into the water at once and not bask in the sunlight on the shores of administrative irregularity? Why not get a St. George and leave Don Quixote in the past? Why not step right into battle, with the Government as an aid, and not mark time for a year or more? Why not get results directly? Success was never accomplished by delay; no, not even in fighting against railway abuses.

IN an after dinner address, Congressman Stanley, of Kentucky, speaking of the Hepburn bill, remarked: "It was not born in the House of Representatives. Those who voted for it 'first endured, then pitied, then embraced.' What the result will be I do not know. Who can foretell the result of a scrap between a locomotive, a 'big stick' and a 'pitchfork?'"

Truly, the gentleman from Kentucky has advanced a sporting proposition—one in which there is no odds-on favorite.

THE Hepburn bill seems, at times, to be a measure which is eminently satisfactory to all parties concerned. The wail of no railway president is heard, the abuse of the demagogue falleth not upon the ear,

the plaint of the shipper is no more than a gentle zephyr. Naught disturbs the still-

**The Importance
of
Being Different** ness of the air but the bickerings of the constitutional lawyers—and one other voice.

The constitutional lawyers have a right to be heard, for the lawyers run the country when the life insurance people are asleep. They are omnipresent and in the Legislature omnipotent. Perhaps we ought to heed what they say; for if there is one thing upon which they are agreed it is that the bill as it came from the House would be but an unconstitutional stone thrown to the shippers who have asked for bread. To what extent the measure does not come up to the constitutional requirements is a matter of disagreement.

But far off in the distance, across the desert and in the stillness of the evening air comes the sounds of the other one voice. The scene is laid in good old New England (God bless her!), for it is before the Get Together Club that President Mellen, of the New Haven, with oratorical flourishes tells us that in the bill lurks the snake—not an unconstitutional snake, but one of the ordinary legislative variety. The bill is charged with not meeting what the people want and the pride of New England is appealed to, to save the carriers from a provision that they shall keep no accounts save those prescribed by the Commission. Aye! Here's the rub. President Mellen is with the President. The President is said to be an advocate of the Hepburn bill. But the New Haven system cannot afford to keep only the accounts which the Commission shall prescribe.

But there is another objection. The bill does nothing to prevent rebates and discriminations. Does not the president of the New Haven know that the object of keeping uniform accounts and only those prescribed by the Commission is a part of the bill before the Senate, and of many other bills, for the express purpose of permitting the tracing of rebates! It is strange, and yet not so, that the Hepburn bill suits other railroad presidents; at least they are not objecting; but fails to suit the president of the New Haven. It suits the carriers in general because it is unconstitutional and affords the shippers no real relief. It does not suit the New Haven president because it suits the other railway presidents.

A NEW type of lawyer has been discovered, or perhaps has discovered himself. His habitat is the Senate, and there he revels. He is self named as well as self found, and is proud of the title *advocatus cornfieldus*—and he is about as bad in fact as the Latin

is that here describes him. He boasts of his continual use of common and horse sense. Unfortunately he is numerous in language and often not very choice in the use of it. Fortunately he is not numerous in numbers.

**The B'Gosh
Senator—a
New Type**

By day and by night he is trying to uproot with a stump puller—for the ground must be prepared for his use—the sound roots of our constitutional tree. He scorns the creatures of our institutions, if not the institutions themselves. He gloats in pessimism and shouts of the dire wrath to come if his ideas be not adopted. He imagines that he plows, for he comes from the part of the country where maize is plowed, and, plowing, that he turns a 12 inch furrow, which to his mind produces a smooth path to justice.

We are confident that our fathers builded too strong for such. The sense of justice in the American people will prevail. They will not allow the traditions to be set aside to accommodate a whim. Nor will they rest the future of the republic in distrust for the judiciary. Whatever the public as an entirety may think, certain it is that the shippers will not allow themselves to be sent across a plowed field to justice while a turnpike offers itself. May the *advocatus cornfieldus* filter his sense, and, taking the blinders off, see the error of his ways!

WHEN Senator Rayner the other day stated that we were hearing from the psychologists with their views on the rate problem, he was not far wrong. It might be noted, however, that some

Psychological Views of the Rate Problem of the psychologists have better views on the subject and the proposed remedies than some people who ought to be better informed.

Recently Andrew Carnegie has given out his views. They are as follows:

The trouble with appeals to the courts lies in the fact that railroad companies have their permanent legal staff. It matters little if appeals be freely handed over to it, which will always retard, and sometimes may defeat justice.

The great shippers who could afford to fight appeals are those who benefit by secret rates or rebates. They are quiet, and wish no change.

The small shippers must suffer, especially if appeals can always be taken. They can spare neither the time nor the money it would require to obtain justice.

The best remedy, as it appears to me, is to allow appeals only when a proposed change of rates affects the railroad to not less than \$— per annum. The amount should be what may be considered high by uninformed parties, but it is a trifling change which does not entail loss to a railroad company of a hundred or even two hundred thousand dollars per year.

The Commission should be trusted to decide trifling cases fairly, while the railroad companies should be entitled to the judgment of the courts when their revenues are seriously impaired.

Government control of railroad rates I consider imperatively required. Other nations have found it so. So shall we.

There is much truth in what the ironmaster says. It is true that the large shippers, if one means the so-called trusts, do not want any change. Their tonnage is sufficient in amount to bespeak for them "fair" treatment. The small shipper, it is equally true, wants a change. He it is who needs protection. He cannot afford a lawsuit, nor can he afford to pay for a proceeding before the Commission, if the costs be less than in the courts.

When it comes about, however, that one is to let the small, trifling cases rest with the Commission and shove the larger ones into the court, we cannot imagine upon what theory or logic such suggestion is based. It seems that if one returning home at night, as the result of the highwayman, is compelled to deliver his second hand Waterbury and 23 cents in the coin of the realm, we should prosecute him not. But if, on the contrary, one be divested of a jeweled Swiss movement and a fair sized roll, go after him red hot. Principles of fairness and justice are to be cast aside; but for what reason Mr. Carnegie tells us not.

We feel in duty bound to commend to the exponent of the latest contribution to the literature of the subject a careful reading of the Grosscup plan. It hits the nail on the head for the troubles he mentions, takes care of the small shipper, relieves him from the financial burdens of a prosecution, and, above all, maintains and enforces those principles which are necessary to the well being of the Republic.

SAYS the Washington Times:

Senator Culberson walked into the Senate restaurant the other day and saw Senator Dolliver sitting at a table with some friends. The Iowa man looked up as the Texan entered, and said:

"Come over here, Culberson, and join us."

Senator Culberson crossed the room and said: "Good morning, Senator. How are you?"

"Just and reasonable," answered Dolliver, "if not fairly remunerative."

It occurs to us to inquire if the reply was justly compensatory.

HADLEY V. BALDWIN—Now comes the defendant of the Hepburn Bill, waiving all rights at law or in equity, and submits his reply to the charges and allegations hereinbefore filed.

In the Court of Public Opinion While defending the Hepburn Bill this respondent arrives at the same conclusion as his predecessor (Hadley) and says: "We should establish an interstate commerce court, perhaps retaining the Commission as a subordinate board of investigation."

THE other day Senator Tillman turned one Mr. Johnson loose in the Senate by propounding one of the questions sent from Oklahoma. Here was an opportunity to "stump" all the Senate—an opportunity taken when no one thought it was coming. The Senate was caught unawares. The question—a perfectly legitimate one—went unanswered. But it was unanswered only a few hours.

Senator Tillman Receives Some Information

The question was: When has a court—the South Carolina Senator insists that the people distrust the Federal courts—injoined an advance in rates about to be put into effect by the carriers? The reply is to be found in *Tift et al. v. Sou. Ry. Co.*, 123 Fed. 789. Sen-

ator Tillman was told the case, but not until he had folded his pitchfork and the Senate had adjourned.

We trust that the Senator has been enlightened upon this point as well as upon other cases where the courts have given prompt and substantial relief. FREIGHT took occasion to tell him. We hope he will profit by the letter.

THE recent decision of the Supreme Court of Appeals of West Virginia, whereby the inspection of property by consignee was held not to be an unauthorized delivery of property, settles a much mooted question.

It has been the custom of carriers to refuse the consignee the right of inspection of goods, when the shipment is made upon an order bill of lading, unless a notification to that effect is on the way-bill. This rule of the carrier, particularly when goods are the subject of shipments which are not covered by official certificates of grade and weight, has worked hardships upon consignees, for they have been compelled to pay for commodities not knowing what they were getting.

If there be a shipment of stone and it be billed as wheat, the railway, morally, if not legally, becomes a party to the fraud which the shipper practices upon the consignee. This may be an extreme case, yet receivers of commodities have been compelled to charge up to profit and loss no small amounts because of the rule in force by certain carriers prohibiting the inspection of goods unless at the same time the consignee present the order bill of lading. The decision of the court in the case of *Dudley v. Chicago, Milwaukee & St. Paul Ry. Co.* is founded upon good sense and justice, and it is to be hoped that this decision will cause carriers who have been imposing burdens upon the consignees to make new rules permitting one to at least examine the goods for which he has to pay.

THE recommendation of the Georgia Railroad Commission to the Legislature of that State in the matter of the enforcement of the orders of the commission is punctuated with good sense. At the present time the only way that this commission can enforce its orders is to institute suit for the recovery of penalties provided in the statute, and this method of procedure the commission finds totally inadequate.

The carriers, after the service of the order upon them, ascertain that the revenue under their rates is sufficiently large to compensate them for violating an order of the commission prescribing a lower rate. The maximum amount which can be recovered by way of penalty is \$5,000, and in numerous instances the carriers have found it to their financial advantage to resist the enforcement of the order. The litigation in the court extends over such period of time as the ingenuity of

railway counsel can devise. Meantime, the shipper is burdened with the advanced rate, and the stockholders of the carriers are receiving dividends.

The recommendation that the commission shall have authority to invoke the courts to grant mandamus or other injunctory process is of great importance, and the want of some such method of enforcement strikes at the core of any railroad situation. If a commission or other non-judicial or semi-judicial body cannot enforce its order the real efficiency of a law upon the subject is meagre. Surely it seems the time has arrived when there must be a short cut to the correction of railroad abuses, and the statute should provide an investigating, detecting and prosecuting body and create a court with powers to issue such process as will meet the necessities of each case.

LAW ON RAISING RATES

(From the New York Tribune.)

John B. Daish, the president of FREIGHT, THE SHIPPERS' FORUM, has sent an open letter to Senator Tillman setting forth numerous State and Federal court decisions preventing the raising of rates by railroads. Mr. Daish cited cases to show where a court compelled a common carrier to deliver goods, and restrained it from discriminating in warehouse charges. He also showed how a railroad was prevented from charging excessive tolls to a coal company. He mentioned an instance where one railroad had to accept cars from another, though it caused a strike.

Other decisions quoted revealed how a certain road had to furnish another carrier the same facilities for interstate transportation of freight as it gave other companies, and how a defendant company was obliged to accept freight and passengers from a plaintiff company at equal rates.

Mr. Daish observed that the question with the shippers is that there shall be provided machinery by which they shall be given prompt and efficient relief without spending vast sums of money in legal proceedings.

The costs of a proceeding before the Interstate Commerce Commission, he says, are a burden on a complainant, and he declares that application to a court brings relief in the same number of hours that it would take to debate the matter before the Commission.

Mr. Daish suggested to Senator Tillman a plan to meet the wants of the shippers that was outlined by a Federal judge. It follows:

"Create a transportation department or bureau of the Government, headed by a live, aggressive man, and give to this secretary or commissioner the best assistants (some of them taken from the railroad ranks) the country can afford. This department or bureau is to have the sole duty of investigating, arbitrating and prosecuting all complaints of discrimination, unjust rates and unfair practices of every description by the railroads, and if unable to settle disputes between shippers and carriers informally, is to present the complaints at once to a special court of transportation, with equity powers, to be created, the judges of which will be required to devote their entire time to traffic questions. The judges will sit together in Washington and separately throughout the country, so that complaints will be received and acted upon with the least possible delay. The department of transportation, acting for the shipper, will prosecute the case. The shipper will be put to no expense for counsel. The only appeal from this special court will lie to the Supreme Court of the United States, and then solely on questions of law."

"A Most Pernicious Piece of Legislation"

President Mellen.

PRESIDENT MELLEN, of the New York, New Haven & Hartford Railroad, addressed the Get Together Club, of Hartford, recently on the subject of rate regulation. While he has been quoted as being with President Roosevelt in this matter, yet he had some things to criticise in the pending Hepburn bill. He said, in part:

"While I have been misunderstood and misquoted as favoring the Hepburn bill, the fact is I regard it in its present form as a most pernicious piece of legislation; one of the worst that has attracted my attention.

"I believe it to be fraught with the greatest danger to that section of the country in which I have my home and the business interests of which are my constant study and care.

Full of Evil Possibilities

"The bill is so bad and is full of such evil possibilities (regarding which I am disposed to believe some of its advocates have been imposed upon) it will probably overshoot the mark, and a careful examination causes me to speculate whether it may not have been cunningly devised by someone opposed to all legislation. So utterly subversive is it of all principles of justice, so utterly regardless is it of all warrant in constitutionality, so arbitrary and autocratic is it in its provisions regarding unimportant matters, that it may well be believed it was the design to cause disgust, distrust and antagonism among all right thinking and fair minded men.

"Such a result would be a misfortune to railroads and to the public, for I have always advocated, and still do, the need of additional legislation.

"The power of the railroads is too great to be longer permitted to be exercised without greater restraint in the interest of the public. Directors do not always direct, officials are not always competent, power long exercised makes men offensive, autocratic and arbitrary, and stockholders, employes and the public suffer and pay the bill.

"Our transportation interests are so vast, their power for good or evil so tremendous, and the public is so vitally interested that they should never permit such power to rest in the hands of any set of men except under carefully guarded restraints and the greatest possible publicity.

Inforce Laws Now in Existence

"Legislation that will accomplish practical elimination of preferences and discriminations (and the present laws have nearly accomplished this); amendments to existing laws requiring frequent examination of records and then publication and accessibility, will do more good to the public (and be without harm to the carriers) than any such legislation as that now pending.

"It will be infinitely more to the advantage of the country if those in authority inforce the laws now in existence until their inadequacy is apparent rather than assumed, and evidence their sincerity by acts and deeds rather than by assertion of what they would do if only granted more authority.

"A sort of promissory note is now proposed, to be met by the carriers in payment for an additional grant of authority, which we have the right to believe would be equally well interpreted and misused.

"Benedict Arnold had thought of no greater damage to the interests of this section than it is possible to cause through the powers granted in this bill, and you must consider not so much the disposition of those framing it as the measure of the grant it contains.

"Given the power and a man will come forward to exercise it. If a square deal is more than a well sounding phrase, if the Senate of the United States was constituted as a safe

clamor, the noise of numbers, the misdirected zeal of those who wish to divide with those who have that which they have not (the Socialists, the Anarchists, the mob), then such a measure as this must fail or be radically amended before becoming law.

"I will call attention to some sections of the bill which seem to me unnecessary, unless there is an ulterior object in giving such a grand chance for graft as to render a position on the Commission one of the finest opportunities in the speculative world.

Concerning Review by Courts

"Concerning the review by the courts, you should view with suspicion and condemn any man or set of men who solicit to render you service, but are wary of review by the courts until it is too late to be of any good.

"The bill contains provisions intended to force the carriers to contract among themselves for through lines or routes, to compel artificial persons created by the States to do that which their charter requirements do not contemplate; and I do not believe there is any warrant in equity or justice in attempting to make them assume a liability their charter limits.

"Under Section 20 power is given to prescribe the accounts, records or memoranda to be kept by the carriers. This is right and proper. The carriers should keep all accounts, records or memoranda prescribed by the Commission, and the Commission should have the fullest power to use the same in any way in which the public interest may be promoted. But what possible advantage is it to the public that a carrier should be prohibited from keeping such accounts, records and memoranda of its business as may appeal to its officers as an advantage in keeping a check upon and record of its operations so long as all records are kept that the Commission may desire? Such a law as this would cover with shame the Czar of Russia or the Sultan of Turkey, and is wholly out of place under any enlightened system of popular government.

President Roosevelt Sincere

"It appears to me that the President is advised of great wrongs that have been perpetrated in the past by the carriers, and wishes to prevent the possibility of a recurrence of anything of the kind, and in this purpose we should all hold up his hands and give him our support, and no one is more loyally disposed to do his utmost in this direction than myself. In this, as in all his efforts to right a wrong, he is sincere, frank, and wedded to no particular method so long as the result is accomplished.

"But when I read a bill nominally prepared for such a purpose, and find there is little or nothing in it to do away with rebates and discriminations that existing laws may not accomplish successfully, if inforced, but is mainly directed to securing authority to interfere in the handling or management of the carriers in other and different matters that appear to be of no public interest, and is being 'hurrahed' through on the rebate and discrimination cry, is it to be wondered that I am disposed to hesitate, halt and consider to what port we are drifting, and what may be the consequences?"

This Syndicate Lost \$5,000,000

The International Mercantile Marine Syndicate, which was one of the largest of its kind ever formed, was dissolved recently, and it was said by one of the members that the loss sustained was \$5,000,000.

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Leading Educators Discuss the Hepburn Bill

FREIGHT reprints from the *Boston Transcript* excerpts from recent articles on Rate Regulation, by Arthur Twining Hadley, LL. D., president of Yale University, and F. Spencer Baldwin, Ph. D., Professor of Economics, Boston University. President Hadley reached the conclusion that the passage of the Hepburn bill is only less undesirable than a compromise; that the pending measure, in its attempt to constitute the Interstate Commerce Commission a court of last resort, is illogical and would be injurious, and that a similar plan was tried in England and found impracticable. Professor Hadley believes, however, that a compromise measure, devised by the conservatives of the Senate, would almost certainly, in the present state of public feeling, work more mischief than radical legislation. President Hadley writes:

"In its external form the Hepburn bill for the regulation of interstate commerce, which passed the House at the beginning of February, varies very greatly from the Esch-Townsend bill of a year ago. Practically, however, there is only one important point of difference. The Esch-Townsend bill provided for the creation of a court which would, among other things, afford a speedy and uniform means of hearing appeals from the commissioners' decisions. The Hepburn bill attempts to put these decisions into effect without the intervention of such a court, and to limit rather than facilitate the right of appeal by making the decision of the commission itself final on all questions of fact.

One of the criticisms made against the Esch-Townsend bill was that it provided for two trials of every case—one before the commissioners, another before the special railroad court which that bill created. In the *Boston Transcript* of April 1, 1905, the present writer urged that a single hearing in the railroad court was better than two successive hearings by two different kinds of bodies. Mr. Hepburn's committee desires to avoid the double hearing, but it undertakes to do it by eliminating the court instead of the commission.

There is reason to fear that this plan will not work.

Professor Hadley then asserts that the situation in England in 1871 and 1872 had many points of resemblance to that which now exists in the United States, and that the attempt, in England, to prevent appeals from the Railway Commission's decisions proved a complete failure. He continues:

Not the individual case only, but the whole apparent attitude of the courts toward the matter of railroad legislation, may be prejudiced by a statutory provision of this kind. In suits brought before them at common law the attitude of the courts, though conservative—or perhaps just because it is conservative—is friendly to the individual trader rather than to the modern corporation. The rights of the individual trader are a good deal more ancient, and his common law standing somewhat better established than those of the large joint stock company. But when it comes to an attempt to infringe the common law rights of a company by acts of special legislation, the case is reversed. The courts view these special acts with close and suspicious scrutiny. They are placed, almost in spite of themselves, in a mental attitude favorable to the corporation and adverse to the individual complainant—favorable to the railroad and adverse to the shipper. The history of the Interstate Commerce Act has already shown us the effect of this mental attitude. Even where the courts have decided against the railroads, they have tended to

do so on grounds of common law, rather than of statute. Take the recent case where the Chesapeake & Ohio sold coal to the New York, New Haven & Hartford at a less price than individual shippers were obliged to pay. The Supreme Court decided the contract to be an illegal one on general ground; but it at the same time threw out all complaints of discrimination as defined by the Interstate Commerce Act. Now, if a statute, in addition to its novelty, contains a provision intending to limit the powers of the courts to supervise its operation, the courts will almost certainly find some way of making it null and void. This renders our legislation wholly ineffective, puts the courts on the side of the big man when they ought naturally to be on the side of the little one, and creates a feeling of popular irritation against the judicial system which is dangerous anywhere, and most of all in a democracy like our own.

But the evil effects of the attempt to give the English Railroad Commission power of fixing rates did not stop here. The attempted performance of this duty took up so much of their time that they failed to perform other duties, which under more favorable circumstances they might have carried out efficiently and usefully. They did not have that influence on the formation of railroad tariffs which their experience and high position would otherwise have secured.

What an advisory commission can do to influence railroad management in these ways was shown by the history of the Massachusetts Railroad Commission under the leadership of Mr. Charles Francis Adams in the years from 1870 to 1875. It was shown in other States, notably in Iowa, in the decade immediately following. It is exemplified in England, even under somewhat unfavorable conditions, in the results of the conferences between the boards of trade and the railways. It was illustrated in the history of the Interstate Commerce Commission itself during those first bright months of its existence when its members considered themselves in the light of advisers of the railroads or the public, and had not asked for powers which have since proved their undoing.

The possibility of giving successful advice is dependent upon the fact that your advice is advice, and is not a command disguised under the form of courtesy. In trying to become a poor kind of court you forfeit the chance of becoming a good kind of commission. In obtaining authority to settle specific rates you lose the influence, which, properly directed, would have enabled you to systematize and control general tariffs. The more intelligent railroad men feel, and feel deeply, the arbitrary character of many of their rates. They would welcome the counsels of a body which should act with them to indicate what the country needs and to show the country that the railroads were working for it and not against it. From the days of Albert Fink down to the present time the weight which would have been given to the representatives of such a commission in a tariff conference is overwhelming, the actual influence which they would have had is unbounded. But once let these counselors appear, not as representatives of the public to help the railroads to do right, but as masters set over the railroads to determine where they have done wrong, and the relation of openness and equality essential to all harmonious action becomes impossible.

For these reasons I believe that evil and not good will come of the Hepburn bill. It encourages the Commission to try to do what it cannot do. It relieves that body of the responsibility of doing what it can and ought to do. But whether at this late date it is possible to get a bill passed which will produce any better results is a very doubtful question.

There is no doubt that the conservative element in the Senate would be strong enough to insist upon the insertion of a provision for court review like that which existed in the Esch-Townsend bill. But it is not clear that much would be

gained by such a course. The Commission would still think that it was a judicial body. It would make enough doubtful orders regarding rates to prevent it from having any real influence on the railroad management of the country as a whole. If you could give the judicial function to the courts and make it clear to the commissioners that they were expected to do something else, there would be a very substantial gain, but if you only give some of the judicial functions to the courts and leave the commissioners to exercise others, the gain is too slight to be worth considering.

Moreover, there are several strong positive reasons why the conservative interests in the Senate ought not to insist on a compromise measure. In the first place, if the railroad men attempt to have the bill modified it will be regarded as a selfish effort to block the wheels of legislation for their own private interest. This is always a blunder. From the standpoint of railroad management alone, the good from preventing the passage of the Hepburn bill would not be nearly as great as the harm which would come from assuming an attitude of factious opposition. The Hepburn bill will not greatly hurt the railroads. If anybody is much harmed by illusory attempts to limit rights of appeal it will be the shippers. Now, this is a free country, and if the shippers are bent upon hurting themselves it may be inexpedient for the railroads to go too far in preventing it. Should the Hepburn bill be passed in substantially the form in which it comes from the House of Representatives there is a fair chance that after a few years of unsatisfactory operation it may be repealed.

Professor Baldwin criticises many of President Hadley's assertions. He writes:

This act of 1873 (establishing the English Railway and Canal Commission) is regarded by President Hadley as analogous to the Hepburn bill. He finds "many points of resemblance" between the two measures. To the present writer this analogy seems superficial. Both the English and the Hepburn bill provide for a commission to investigate complaints brought against railway companies and afford relief. But the powers and the procedure of the commission are defined very differently in the two cases. In fact, the unlikenesses are more important than the likeness. The English commission as constituted by the act of 1873 was an inferior court rather than a rate making tribunal. Its jurisdiction was limited in various ways so that it could not dispose of all classes of complaints. The burden of proof was placed on the complainant or the commission. The machinery provided for enforcing decisions was defective. In respect to these and other points the Hepburn bill is a much stronger measure than the English act of 1873.

The alleged failure of that act, therefore, can hardly be urged as a convincing argument against the passage of the Hepburn bill. But, furthermore, the English law was by no means the complete failure which the reader of President Hadley's article would infer it to have been. Faulty as were its provisions, it accomplished a large amount of good. Authorities are agreed that the act was measurably successful. Even President Hadley concedes this in his "Railroad Transportation."

The commission was reorganized by the Railway and Canal Traffic Act of 1888. This act, which is still in force, provides for a commission of five members, composed of two lay and three ex-officio members. The latter are justices of the Superior Court in England, Scotland and Ireland. "The active commission at one time has a membership of three, the two lay commissioners presided over by the designated Superior Court judge of the country in which the commission is sitting." The commission was given a definite court organization, and its jurisdiction was widened to include the whole field of railway operations. The burden of proving that charges were reasonable was placed upon the railway companies. The decisions of the commission were made abso-

lutely final in matters of fact, the right of appeal being limited strictly to questions of law.

Professor Baldwin gives a summary of the analytical differences between the English and American commissions contained in a monograph written in the *Quarterly Journal of Economics*, by Prof. S. J. McLean:

1. The Railway and Canal Commission is a court; the Interstate Commerce Commission is a bureau of investigation and prosecution. "The English commission is a court. The American commission has the functions of a referee or special commissioner. The former has final decision in regard to fact and a limitation on the right of appeal, with the result that appealed cases are normally settled within a year. The latter has no finality of decision in regard to fact, and appeals from its decisions have taken from two to nine years to decide. While the English commission has been overruled in the period ending 1904, wholly or partly, in six out of thirty-eight appeals, the American commission has in approximately the same period been overruled in twenty-nine out of thirty-eight appeals."

2. The English commission is non-political and permanent in its constitution; the American commission is bi-partisan and temporary. "While the members of the American commission hold on a limited tenure and the commission is a bi-partisan organization, the tenure of the lay commissioners in the English commission is for good conduct, there is a pension on retirement, no question of bi-partisan organization enters in, and the provision is made that one of the commissioners shall have technical knowledge of railway affairs. The judicial members of the English commission are assigned to it for five years; but during the period they are not engaged in the commission work they perform their regular duties as judges of the high court."

3. The English commission does not fix rates—that is done by parliamentary legislation in England; the American commission has tried to do this and has repeatedly asked for legislation conferring the rate making power. "While the Interstate Commerce Commission has, practically from the outset, claimed, as a necessary implication from the language of its enabling statute, an amendatory rate making power, the English commission, organized as a court, has, almost without exception, kept aloof from making implications extending its jurisdiction, and has denied any intention to exercise a rate making power."

Professor Baldwin concludes:

This English experience certainly furnishes no precedent or argument for railway legislation like the Hepburn bill. On the other hand, it cannot be pointed to as a warning against any additional legislation. England has gone much further in regulating railways than has the United States, but in a different way. There seems to be no reason for adopting in this country the English method of fixing maximum rates by direct legislation. But the court type of railway commission has much to commend it. If we were to take a leaf from English experience, then, we should establish an interstate commerce court, perhaps retaining the commission as a subordinate board of investigation.

Secretaries of commercial and public bodies throughout the United States are invited to report their proceedings to FREIGHT. All subjects of general interest relating to freight rates and transportation questions will be published in detail. Communications of this kind should be addressed to Editor FREIGHT, 116 Nassau street, New York city.

Guarding Against Transportation Losses

BY C. A. TUPPER

THE "transportation tax," concerning which so great an outcry has been raised, is generally regarded as excessive—and rightly so; but what few people stop to consider is the fact that a large proportion of this tax is composed of losses, many of which are avoidable. Now, as a prominent railroad official (R. L. Calkins, F. C. A., N. Y. C. & H. R. Ry.) recently said: "It is the small errors and oversights that make up the most of the enormous total of losses." Whose errors? it may be asked. Well, Mr. Calkins was frank enough to attribute them to employees of the railroad companies; but he was speaking, at the time, to a gathering of freight agents. Had he been addressing a meeting of shippers, he might, with equal force and propriety, have called attention to their shortcomings in this respect. Probably he would have been glad of the opportunity.

As Carlyle said, reform, like charity, should begin at home; and shippers would find it well worth while to set their own houses in order when starting on a crusade against the carriers. That this would pay them handsomely, in the aggregate, there can be no doubt.

How Losses Can Be Avoided

Now, in what ways can losses be avoided?

(1) By ordering cars, carefully specified as to kind, capacity, etc., as far in advance as possible, so that the railroad company may be given proper opportunity to fill the order satisfactorily; (2) by having freight in a condition to load promptly, thus avoiding demurrage and delay in switching to outbound trains; (3) by weighing the goods *into the car* over scales that are frequently tested and known to be in good working order; (4) by closely examining the car before and after loading, to insure that it is in good condition (floor, sides and roof), and that the doors are securely fastened; (5) by seeing that the car number *and initials*, marked capacity and stencil weight are recorded, and that a notation is kept of the weight and exact quality of the goods (with a sample of any commodity which can be sampled); (6) by writing out on the shipping receipt, and having copied on the bill of lading, complete and unequivocal billing, including the car number *and initials*, brief description of the goods, full name of consignee and exact point of delivery, routing desired (if over more than one line), and the name under which the shipper is doing business—not a popular abbreviation or substitute for it—the terms of the B/L to be fully understood, so that no rights may be unwittingly signed away; (7) by sending one or more tracers after the car, both by wire *and mail*, if it is not heard from within the average time of transit; (8) by keeping track of any delay in unloading and insisting upon a prompt accounting for the goods; (9) if loss occurs through any fault of the carrier, con-

signee or final receiver of the property, by fixing the blame and securing proofs of it as completely as possible and putting in a claim promptly.

The greatest aid to shippers in looking after freight is a carefully kept record which contains, in such form that no mistake can be *read into* it, the information mentioned above. As a rule, this may be very condensed; but all abbreviations should be perfectly plain and not susceptible of more than one interpretation. Some very costly, if ludicrous, mistakes have been made by just this means, owing to the fact that what was perfectly clear to the original writer took on another meaning when viewed by other eyes.

Uses of the "Tickler"

When the business is a large one, involving a great many shipments during the course of every month, the car register should also be accompanied by what is known as a "tickler," namely, a book for locating at once upon the page of the register any car number which it is desired to look up. There are a number of convenient forms in which this tickler may be arranged, but the simplest is probably that of the vertically ruled book, with columns numbered from 01 to 99. Each of these columns is subdivided; on one side is written all figures in the car number above the tens, and on the other is entered the folio of the register where the car number appears. For example: If it were desired to indicate the position of car No. 49,253 on the register, we would turn to the column in the tickler headed 53, and enter therein the figures 492 on the left hand side, and on the right hand side the number of the page in the register where the record of the shipment is given. If the car number were 20,503, we would index it under column 03 in the tickler, and so on. I refer specifically to the latter, because it is in respect to the integers preceded by ciphers that many people become confused as to the makeup of this tickler. The form of the car register is, of course, more important than that of the tickler, but this will vary according to the nature of the business involved, and its makeup is merely a matter of common sense. The tickler, on the contrary, is a convenience which seems to have been very largely overlooked. I have known of large firms that permitted their clerks to waste a great deal of valuable time in looking up car numbers, for the locating of which there was absolutely no adequate system.

Few people realize the extent of the losses that accrue as a result of the improper ordering of cars. To illustrate: One of the responsible men connected with a company or firm will instruct his clerk to have a car placed for such and such a shipment; the clerk will telephone to the railroad company, and on being asked what capacity of car is desired he will answer, "Oh, about 60,000, I guess." This may prove to be correct, but it is quite as likely that when the car is switched in

it will develop that no more than a 40,000 pound car, or a 50,000 at most, is needed for the shipment. The consequence is that the firm must either pay freight on the full minimum weight for a car of 60,000 pounds capacity, or else enlarge the size of the shipment. That the latter is often fraught with evil results is too well known to require extended comment. Again, the ordering of a car is frequently put off until the last thing, and the railroad company, as likely as not, will be unable to furnish one of the proper capacity, so another, and usually larger car, is substituted, with the same results as before mentioned. The bickerings and unpleasant feeling which these occurrences engender between shippers and railroad officials, and the costly delays in loading which they often cause, are also worthy of serious consideration. In fact, there is many an "old timer" whose reminiscences on this subject might fill a small library.

The Shipper Should Be Ready

Demurrage charges at the point of shipment are really without any excuse, for when a shipper orders a car he should be prepared to load it immediately upon its arrival, no matter how uncertain the exact time of its delivery to him may be. The vagaries of the railroad companies in this respect are so well known that they should be discounted in advance. The real losses to shippers, however, from delays come not so much from the payment of a few dollars' demurrage as from failure to "make" the next train out. It is always wise to act on the assumption that this is the only train worth considering at the moment, for frequently it arrives at its destination several days ahead of the one next following. Many a shipper has known the thrill of satisfaction with which he learned of the speedy and fortunate arrival of a car billed out just in the nick of time; while who has not been vexed with the news that some car which he had been slow in getting forward had been caught in a sudden stoppage of traffic and become the centre of a rapidly growing blockade?

The importance of accurate loading weights is recognized by any man of sense, and shippers have been so persistently warned to look after the condition of cars before dispatching them that little remains to be said on these points.

Enough attention has not, however, been paid to the matter of keeping a proper record of car numbers and initials, marked capacities and stencil weights. This data will play an important part in any subsequent dispute, either with the consignee or the railroad company, and should be carefully noted. Failure to record car initials is one of the most flagrant instances of neglect, and has frequently made it impossible for tracers to be sent after delayed shipments. There is no guarantee, even, that they will be properly set down in the railroad agent's record, as innumerable shippers have found to their cost.

The value of some authentic evidence as to the quality and condition of goods when shipped is clearly apparent, but, strange to say, many shippers neglect this elementary precaution. Why do they do so?

Errors in Billing

Billing is a subject upon which volumes have been written, but it is by no means exhausted. To a man handling traffic something new and interesting turns up almost every day. The losses caused by incorrect billing are, however, an old, old story; their number is legion. Such errors are sometimes caused by lack of understanding, but far more often through carelessness or haste. Shippers seem to forget that contracted forms which are entirely plain to them may be misunderstood by others, particularly the new freight clerk, who makes out his waybills from their hastily scribbled shipping orders, or by those responsible for the transfer of cars at junction points. Railroad men are being changed about from one division to another all the time, and they cannot be expected to acquire immediate familiarity with all the forms of shortened billing used along the line. Carelessly written shipping orders, when literally copied upon waybills, are often a great puzzle to these men, and inevitably lead them to make many mistakes in routing. The importance to shippers of looking after this matter as they should cannot be too strongly urged.

The utility of tracers is something which has never been given adequate consideration by the great shipping public—fortunately, perhaps, for the railroad companies, who would be obliged to largely augment their clerical force if the possibilities of these little scouts were fully realized. It will be impracticable, however, in an article of this length, to do more than refer to them in passing.

"Keeping Tab" on a Car

Closely allied to tracing for shipments is the practice of following up their terminal record, as above mentioned. This also deserves more comprehensive treatment in a separate article, for shippers generally fail to appreciate the necessity of "keeping tab" upon a car *after* it has arrived at its destination. This one neglect on their part is, moreover, responsible for an extremely large percentage of the yearly losses for which they receive no reimbursement. It is a subject that should be given careful attention, particularly by the various commercial organizations of the country, through whom shippers are largely compelled to act in the matter of deliveries at terminal markets.

If all of the precautions enumerated above are observed, they will reduce the risk of loss from transportation, and everything connected with it, to the veriest minimum. To the uninitiated they may look like a complicated and cumbersome system, but they really involve very little labor, when taken methodically and in turn—far less, in fact, than any haphazard or incomplete manner of caring for shipments.

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—A Subscriber.

DISCUSSION OF FREIGHT METHODS

To the Editor of Freight:

SIR—You can be of much use to both the shippers and to the transportation lines, and I would suggest that discussion of freight matters be encouraged in your columns. When I say discussion, I mean good natured discussion that will point out when the freight lines can benefit themselves, and, incidentally, the shipper, and where the shipper can make plain what is necessary to increase his business, and, incidentally, the revenue of the roads, such discussions to be of a general nature.

I do not wish to refer to the present agitation which involves rate regulation by the Government except so far as it relates to the subject of transportation as a whole. Personally, I believe it grows out of a general lack of understanding between the shipper and the roads, rather than discriminations between shippers or excessive rates. My experience in the transportation business, together with a mercantile experience of some years, justifies me in saying this. After leaving the freight service I was surprised to learn how ignorant the average business man is of the proper procedure in transacting his transportation business and how prejudiced he is against transportation methods as a whole, and unjustly so, in my opinion. I say this with the full knowledge that many of your readers will resent it, but the fact remains, nevertheless, that it is so in a majority of cases.

If the shipper would pay as much attention to the transportation end of his business as he does to his manufacturing end he would be surprised to find how easy it is to get what he wants from the freight lines, always assuming his wants to be reasonable and fair from a business standpoint.

I say, without fear of contradiction, that not one shipper in a thousand has any conception of how the transportation business is conducted from a traffic standpoint or why the rules (or red tape, as he calls it) are necessary for his protection as well as for the protection of the lines handling his freight.

Many shippers are protecting themselves by employing shipping clerks who have had railroad experience or by employing men from traffic offices when their business warrants such expenditure. These men must be a great help, as few merchants abolish these offices after once creating them. Now, if the merchant finds the freight end of his business runs smoother with a freight man at the head of it, what is the natural inference? Is it not that his freight man knows how to handle the freight lines without friction?

I believe business colleges will, in the near future, have to add a course in practical traffic matters to their studies, and this will do more to educate the coming generations how to deal intelligently with the traffic situation than anything else, and, in my opinion, education along this line is the only thing that will ever enable the public to deal intelligently with it.

When a Judge, who is often quoted in the present

discussion, makes the suggestion that the general freight agents be appointed by the Government so local agents cannot cut rates it is time to say: "It is to laugh." Now, if one wishes information about surgery he consults a surgeon; for expert opinion along any line one will consult an authority on the particular subject under investigation, but for freight rates and rate regulation we consult the legal profession. How can we expect a solution under the circumstances? How can the Senate or any other legislative body deal with the details of a situation without knowing the details? You say it is not details, but general principles! You have been dealing with general principles since 1887. What has been done to stop discrimination? The limit has simply been raised and the small player put out of the game.

Some day the shipping public will awake to the fact that it must know more about rates, how they are made and what would be the result should a rate it considers necessary be promulgated. What might be a reasonable rate for one man's shipment might work a great injustice to a dozen other shippers at some other point. Shippers are too prone to look at the public service rendered by the freight lines as a service that can be adjusted to their individual needs regardless of the requirements of other shippers, and this, in my opinion, is the root of the present clamor for Government made rates.

When shippers are educated to deal with freight representatives along transportation lines there will be less friction, and when a traffic official knows the shipper cannot be put off with an empty excuse and knows that his refusal to do what is requested must be backed up by an intelligent reason, then the shipper will have learned along transportation lines what he has already learned in mercantile lines, viz., to know what he is talking about before he goes against a man who knows his business. This, with reasonable laws, will accomplish what is necessary to bring about harmony between now conflicting interests, and I think your magazine can materially assist in bringing about this end.

(Signature withheld by request.)

NEW YORK, March 13, 1906.

Failure to Manifest Freight

To the Editor of Freight:

SIR—We have cases every week of carelessness on the part of the agents at shipping points, the principal one of which is the failure to manifest goods. The non-manifesting of the goods results in numerous complications. One is that the consignee is held up from the delivery of the goods in nearly every case.

We have an instance now of a shipment from Marietta, Ohio, to Philadelphia, where, in this particular case, we managed to get our goods; but there was one package short, and although the shipment reached us two or three weeks ago we have not yet received a freight bill. Before this missing package can be properly traced a manifest has to be procured,

the agent at point of shipment having failed to send one to the agent at Philadelphia. We have had to conduct a considerable correspondence in order to impress upon the agent of the shipping point that this manifest should have been forwarded with the goods, but we seem to have been unable to show him, in our last letter that he should hurry and send it to destination. The agent at destination is unable to take up tracing until he receives such a manifest and is unable to send us a freight bill until he gets the manifest.

We have had other cases where goods have been shipped to us from the East and distinctly stenciled "Philadelphia," and yet the transportation company has declined to deliver the goods, not having a manifest. Of course, in these cases if we should take the trouble to produce our original invoice we could demand the goods, but you can readily understand that no business house should be called upon to allow the invoice to leave the office.

There is another great disadvantage in the failure of the agent at point of shipment to manifest goods, and that is, for instance, a shipment is made from Chicago to Philadelphia and the agent fails to send a manifest with the shipment. We call at depot here, after a reasonable time has elapsed, and ask if there is any freight for us. The agent looks over his manifest and says "No." We insist that there must be some goods here and the agent still replies: "Nothing for you," whereas all the time the goods are lying at the depot without any billing reference. Unless the consignee understands his business and presents the B/L to the agent and insists that the agent look around the depot to find such goods, the chances are that he would be very seriously delayed in getting them, particularly if the agent already has the goods in his possession and has failed to send back the papers requesting a billing reference from the point of shipment. This trouble is experienced more in the smaller towns where the consignees do not recognize the value of a B/L, which is sent to them really for this particular purpose; that is, to give them an opportunity to demand the goods and trace back for them if they have not arrived.

There is another matter—the question of claims. It is well understood that a claim agent's salary is based on the amount of money that he can save in turning down legitimate claims. Therefore, unless a shipper keeps a complete record, in the shape of a claim book, and follows such claims up repeatedly with this number and the claim agent's number, such claims are liable to be pigeonholed and not have the proper attention.

We have a case of this kind now. Settlement was made today of a shipment that was forwarded over a year ago to Little Rock, Ark., from Philadelphia. Claim was placed in the hands of the transportation company November, 1904, representing a shipment of a certain lot of goods to Little Rock. Part of this shipment was lost in transportation. The fact of the loss of these goods in transportation could have been

easily established inside of three months from the time the claim was made and settlement could have followed immediately afterward, instead of which we had to wait a year and a quarter for settlement by the railroad company. This is not justice to the shippers or to the consignee, and such a condition should not exist.

We have another case of a shipment made on September 7, 1905, from Philadelphia to Kansas City. Claim was placed in the hands of the initial line here on November 14, 1905. With the claim papers there was abundant evidence that the goods were lost after they reached the Kansas City depot and before transference by the railroad company to a certain switch in Kansas City, which would have completed the delivery. Up to the present time we cannot induce the transportation companies to pay for these goods. This may take a year, also.

We have another case of a shipment made several months ago to a small town in New Jersey, from Ohio. The shipment happened to be going to a prepaid station. The agent at the point of shipment, which was on a prominent through freight line, accepted the shipment freight "collect." When he billed the shipment he left off the railroad to whose care this shipment was consigned, which compelled the shipment to go to a wrong junction point and delayed the same for at least a month. The billing of the shipment "collect" delayed the same another month, awaiting rebilling, as the delivery line would not accept the shipment unless the freight charges were prepaid.

In conclusion, the writer desires to state that there are frequent meetings of the different associations of freight agents and traffic managers, but you will find that matters like this are seldom discussed. We hope that the time is not far distant where the transportation companies will take a greater interest in these different grievances and try to remedy evils, which are simply the result of carelessness and are entirely inexcusable.

TRAFFIC MANAGER.

PHILADELPHIA, February 27, 1906.

Red Rock Fuel Company v. B. & O. R. R. Company

Proceedings before the Interstate Commerce Commission:

April 29, 1905—Petition filed.

June 5, 1905—Hearing.

November 25, 1905—Decision.

Proceedings before United States Circuit Court, West Virginia:

January 26, 1906—Complaint filed.

February 7, 1906—Answer filed.

March 1, 1906—Complainant received the relief asked for, the carrier consenting.

What the Commission had under consideration seven months was decided (as far as complainant was concerned) by the court in one month and four days.

Every issue of FREIGHT contains exclusive information of exceeding value to shippers; \$3 a year.

MARYLAND RAILROAD COMMISSION BILL

A bill has been introduced in the Maryland Legislature by Representative Frederick T. Dorton providing for a transportation commission for that State. The commission is to consist of three members, each with a salary of \$3,000 per annum, and who, in order to be eligible for appointment by the Governor, must be at least twenty-five years of age and in no wise interested in any transportation agency within or without the State.

The commission is given jurisdiction to provide classifications, rates and regulations for the transportation of persons and property by any transportation company operating in Maryland. It also has power to provide rules for the furnishing of transportation facilities, rate per day for the movement of loaded cars, and to provide payments for storage of property at destination. The commission is given authority to inspect the books and papers of any transportation agency operating within the State, and penalty for failure or refusal to allow such examination is provided. When rates or classifications have been established by the commission, they are conclusively to be deemed to be just, fair and reasonable, but provision is made for review before the Superior Court of Baltimore City, and in such proceeding the carrier must show by satisfactory evidence that the rate or practice prescribed by the commission is unreasonable or unjust.

Appeals may be taken from the Superior Court of Baltimore City to the Appellate Court of the State. It is provided by the bill that if any carrier shall charge more than the prescribed rate or practice any discrimination by means of rebates, an injured party may recover from the carrier in the sum of \$100. If the commission be of the opinion that the interstate commerce law is being violated, it is given authority to bring a proceeding before the Interstate Commerce Commission in that behalf. For giving preferences by means of false billing, false classification or false weights, the agent is to be fined in the sum of not less than \$100 or more than \$1,000.

In addition to the enforcement of the bill which has been introduced, the commission is charged with the duty of enforcing all acts relating to common carriers or transportation agencies within the State.

GEORGIA COMMISSIONERS REPORT

The report of the Georgia Railroad Commission for 1905 has just been issued. It deals with the changes in rates and freight tariffs of the several carriers, reciprocal demurrage rules, the arbitration of tax returns, extra passenger trains when the regular trains are behind schedule, platforms and doors for freight conductors' cabs.

Concerning the power of the commission to compel obedience to its rules, the report says:

"At this time the only means given the commission by law to compel obedience to its rules and regulations is to sue in the courts for the recovery of penalties provided by the statute in cases where such rules and regulations are violated.

"This remedy is manifestly inadequate and ought to be improved. The law should, in our judgment, be so amended as to enable the courts of this State, either by mandamus or mandatory injunction, in a summary way, to compel carriers specifically to perform the duties which they assume or which are imposed upon them by law.

"An example will suffice to demonstrate the necessity as above suggested. A railroad company finds that its revenues can be increased by charging exorbitant or discriminatory rates. The commission issues an order requiring the company to desist. The company refuses. The commission institutes suit to recover the statutory penalty. The maximum that can be recovered is \$5,000. The company finds that it would be to its financial advantage to litigate, even if compelled finally to pay the penalty. The litigation draws its slow length through the courts, and months, even years, elapse before the penalty is finally recovered. In the meantime, the public has been compelled to pay the unjust rate, and perhaps the commercial prosperity of a town or section has been destroyed.

"If a given order or rule of the commission is to be tested in the courts, it seems to us that its actual enforcement under mandamus from the courts would best demonstrate whether it was reasonable or unreasonable. It would enable the commission to give immediate relief to the public, and at the same time would reserve to the carrier companies all of the legal rights that they now enjoy. Hence we earnestly recommend that the law be amended as above indicated."

Large Gas Engine Units

The remarkable strides recently made in the design and construction of large gas engine units, both in this country and abroad, have clearly indicated that the possibilities for the application of that form of prime mover are practically limitless.

German builders were among the first to appreciate this fact, and as a result have perfected the best types so far produced. American builders, however, have not been slow to see the advantages offered by large

units, and the Allis-Chalmers Company, of Milwaukee, for one, has been placing before the purchasing public, for some months past, its gas engines of the Nürnberg type, in capacities ranging from 300 to 5,000 horse power, and for all power purposes.

An 1,800 B. H. P. Allis-Chalmers unit was recently ordered for the Crystal City, Mo., plant of the Pittsburgh Plate Glass Company. It is of the well known four cycle, double acting type, direct coupled to a 1,000 K. W. Allis-Chalmers generator.

BILLS OF LADING IN ISSUE

Judge Morris, in the United States District Court, heard argument on a demurrer to the indictments charging Mr. Gilbert H. Cobb, agent of the Hamburg-American Line and also foreign agent of the Pennsylvania Railroad, and Mr. Robert H. Ways, agent of the Johnston Line and also foreign freight agent of the Baltimore & Ohio Railroad, with violation of the Harter Act of Congress, approved February 13, 1893, which requires transportation companies to give shippers an unqualified bill of lading. The judge reserved his decision.

The complaint was made by Mr. John L. Alcock, a lumber shipper. It is based on certain clauses in bills of lading which, it is claimed, relieved the transportation companies from any liability for loss and damage arising from negligence, improper loading or storage or improper delivery. The accused are also charged with refusing to issue bills of lading stating the number of packages or quantity and the apparent order and condition of merchandise delivered to them for transportation. It is said that similar bills of lading to those complained of are issued by all transportation companies.

It was claimed by the demurrer that none of the clauses in the bills of lading objected to are in conflict with the Harter act.

The attorneys in the case were Everett P. Wheeler, of New York, and John J. Donaldson, for Mr. Cobb; John G. Wilson and Arthur George Brown, for Mr. Ways; District Attorney John C. Rose, for the Government, and Robert H. Smith, for the National Lumber Exporters' Association, the members of which complain that they are injured by the present form of bills of lading.

A Rose by Any Other Name, Etc.

To the Editor of Freight:

SIR—I desire to suggest a name for the Roosevelt-Hepburn - Dolliver - Clapp - Tillman - Bailey bill. Of course, one can give it the name of all these fathers, granduncles and other relatives, but I very much fear that in our American way of shortening things it may eventually carry but the name of one of these eminent and learned gentlemen, and to the exclusion of active supporters. In order that the measure may have an appropriate name, why not call it the "Lydford Law"? You will recall that Lydford was a fortified town in Devon, England, and there were held the courts of the Duchy of Cornwall. There it seems some irregularities of the administration of justice prevailed, and particularly for the violation of the laws relating to tin mining. Persons charged with the violation of such laws were confined in a loathsome dungeon pending trial, and from this arose the plaint of the Devonshire poet:

"I oft have heard of Lydford law,
How in the morn they hang and draw
And sit in judgment after."

Is not the Roosevelt-Dolliver-Clapp-Tillman-Bailey bill a modern version of the Lydford law?

EASTMAN, GA.

J. M. GILES.

Eighteenth Annual Convention of the National Association of Railway Commissioners

In the call issued by the president and secretary of the association, the following are given as the principal topics which will be considered by the eighteenth convention of the National Association of Railway Commissioners, which meets at the office of the Interstate Commerce Commission in the city of Washington on Monday, April 2:

1. Classification of operating and construction expenses of electric railways.
2. Grade crossings.
3. Railway taxes and plans for ascertaining fair valuation of railway property.
4. Amendments of act to regulate commerce.
5. Uniform classification and simplification of tariff sheets.
6. Railway statistics.
7. Legislation.
8. Safety appliances and block signals.
9. Delays attendant upon enforcing orders of railway commissions.
10. Rates and rate making.
11. Powers, duties and work of State railway commissions.

It is expected that committee report will be presented upon each of the foregoing subjects. Other matters as presented by the individual members will also come up for discussion.

Currency System Reform Necessary

In *Moody's Magazine*, for March, Lyman J. Gage, former Secretary of the Treasury, has an able article on the "Necessity of Reforming Our Currency System." He concludes:

"The following propositions are, I believe, based on economic truth:

"Next to production and the means of transportation, credit (through which the products of industry are exchanged) is the most important operating factor in our business life.

"The bank, through natural evolution, has become an essential agent to give to credit its highest effectiveness. It performs its function by giving its obligations to pay, in exchange for the obligations of those with whom it may deal; the banker's obligations, so issued, should be put in a form the most convenient to those who obtain the use of them.

"There is no difference, in principle, between the obligation of the bank, expressed by a credit on its books, and its note, which may pass from hand to hand.

"The public is the best judge, according to time, place and circumstances, of what will best serve its needs—whether bank notes, or credit on bank books; and, consistent with safety, the greatest freedom of choice should be allowed."

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALENDAR OF HEARINGS

Washington, D. C., March 29, 1906

William Randolph Hearst v. Philadelphia & Reading
Railway Company et al. Reargument.

COMPLAINTS FILED

In the matter of alleged unlawful discrimination against the Enterprise Transportation Company by railroad lines leading from New York city.

Howard Mills Company v. Missouri Pacific Railway Company et al.

Unreasonable rates on flour as compared with wheat between Kansas points and Pacific Coast terminals.

HEARINGS HELD

March 5, 1906, New York, N. Y.—In the matter of alleged unlawful discrimination against the Enterprise Transportation Company by railroad lines leading from New York city.

March 9, 1906, Pittsburg, Pa.—Pittsburg Plate Glass Company v. Illinois Central Railroad Company. Unreasonable rates on plate glass, in carloads, from Chicago, Pittsburg, Kokomo and East St. Louis to Minneapolis, Minn., and other points.

March 10, 1906, Cincinnati, Ohio.—In the matter of underbilling and misrepresentation of freight.

March 12 and 13, 1906, Kansas City, Mo.—In the matter of the transportation of petroleum and its products from points in Kansas and Indian Territory to interstate destinations.

March 14, 1906, Davenport, Ia.—George D. Henry v. Chicago; Rock Island & Pacific Railway Company. Unreasonable charge on shell corn from Amity, Mo., to Pottsville, Ia.

March 14, 1906, Davenport, Ia.—Ohsman & Effron v. Chicago, Rock Island & Pacific Railway Company et al. Unreasonable rates on scrap iron from St. Paul and Minneapolis to Chicago, St. Louis and East St. Louis.

March 19, 1906, Potecasi, N. C.—C. E. Davis v. Seaboard Air Line Railway. Unreasonable charge on evergreens from Potecasi, N. C., to Pittsburg, Pa. (Testimony taken by deposition.)

March 23, 1906, New York, N. Y.—In the matter of underbilling and misrepresentation of freight.

Rates on Second Hand and Worn Out Dynamos

The Commission on March 23 rendered its decision, in an opinion by Commissioner Prouty, in the case of the National Machinery & Wrecking Company against the Pittsburg, Cincinnati, Chicago & St. Louis

Railway Company and others. This case involved the proper rate on a shipment of a second hand dynamo from Marietta, Ga., to Cleveland, Ohio, shipped as scrap iron, and the description changed to "electric dynamo" at the point of destination. Through this change of description a much higher rate was applied. The points of the decision are as follows:

Two questions seem to be presented by this record. First, should the rate on second hand dynamos be less than that on new dynamos. Second, should the rate on dynamos when they are only valuable as junk be the same as on new dynamos.

We know of no instance where the rate on second hand articles as such is less than the rate on the new article. There are cases where a lower rate is imposed when a machine is returned for repairs than would be imposed upon a single movement of the machine. The Western Classification provides that, when goods which have been shipped to a given destination are for any reason returned, a rate of one-half the going rate shall be applied. Under the Official Classification shipments of household furniture when released to the value of \$5 per 100 pounds take a first class rate as against a rate of one and one-half times first class when not so released. These instances, and others which might be cited, recognize to an extent the principle that the condition and value of the property may properly be taken into account in determining the classification.

It may also be noted that in the business of handling these second hand dynamos the dynamo, when shipped from the electric light station to the factory, is in the nature of a raw material which is to be converted into a manufactured product. Its value is very much less than that of a new dynamo, and that value depends largely upon the freight rate. In the case before us the complainant paid \$85 for this machine and was charged \$83.79 for transporting it to Cleveland. Much might be said in favor of a rule which would apply a lower rate to second hand dynamos when shipped from the electric light station to the repair shop than is charged upon either a new or second hand dynamo when sent to the station for use; but that is a question of policy for the railways themselves. This Commission cannot say that it is unjust or unreasonable to require the same charge for the transportation of the new and the second hand dynamo.

The second question is an entirely different one. The dynamo is no longer valuable as such; it has ceased to be an electric machine and has become a combination of copper, brass and iron scrap. Should the same rating be applied to this as to the dynamo?

Under the Official Classification many iron articles in less than carload lots are rated as third class. Most kinds of machinery are second class. Dynamos are first class. Assuming, without expressing any opin-

ion upon that subject, that this rating of dynamos is just and reasonable, it must be upon the ground that the dynamo is a valuable and delicate piece of mechanism which can afford to pay a high rate of carriage and which requires great care in handling. Neither of these things can be affirmed of that dynamo when it has become junk. Its value is no greater than the selling price by the pound of the metal which it contains, nor indeed as great, since a certain amount of labor must be expended before even that price can be obtained. It is apparent that there ought to be some way in which this scrap can be shipped at a less rate than would be applied to the dynamo.

The railway witnesses state that this can be done; that the tariffs provide a fourth class rate upon iron scrap and a third class rate upon copper and brass scrap; but they further state that in order to obtain this rate the scrap must be presented for shipment in boxes or barrels. In other words, this dynamo must have been broken up at Marietta before it was offered for shipment. The application of such a rule would have prevented these complainants from handling this dynamo or from doing a similar business at other points, and we see no good reason for its enforcement. It was said by the same railway witnesses that a steam engine, or the flywheel of an engine, or a steam boiler might be shipped at the scrap rate without being broken in pieces, provided it was manifestly of no further use for its original purpose. In the same way we think that it should be possible to ship as junk a dynamo which has been bought for that purpose and which has actually no other value. Such a dynamo need not be boxed or otherwise prepared for shipment, and it should, of course, bear the rate applicable to the highest class metal used in its construction.

The defendants insist that the application of such a rule would open the door to fraud, and that dynamos which were in fact intended to be repaired and resold as second hand dynamos would be shipped as scrap. While this objection has some force we do not regard it as controlling. First, while it is true that railways are forced to continually guard against misdescriptions of property, we still think that something should be left, in dealings between the carrier and the public, to the good faith of both parties. Second, a dynamo is a delicate piece of mechanism which requires ordinarily careful preparation for its safe transportation by rail. Few shippers would venture to offer a dynamo of much value without such preparation, since the railway would be absolved from all care in its carriage. Third, the railway has it in its power to make sure of the good faith of the shipper by requiring the dynamo to be mutilated before leaving the hands of the delivering carrier at destination. It appeared from the testimony that this requirement had on several occasions been imposed upon these complainants as a condition of obtaining the scrap rate upon their shipments. Perhaps this might be done before delivery for shipment.

The shipment in question was boxed as a dynamo and was, so far as could be seen by external inspection,

in fact a dynamo. It was described by the Marietta Electric Light Company as "scrap iron," but that company understood that the machine was in fact bought by the complainants as a second hand dynamo, and that this description was intended to secure a lower rate of freight. Under the circumstances we think that the defendants were justified in applying to it the dynamo rate, and this complaint will be dismissed; but we also feel that the rules of the carriers should be so modified that the complainants could, had they elected, have shipped this dynamo for what it in fact was, viz., junk. We do not attempt to make any order, for we have no authority to do so, but call this to the attention of the defendants in the hope that they may give it consideration.

Differential Between Wheat and Flour

The differential in favor of wheat and against flour on shipments from Kansas points to Pacific Coast terminals and points in Arizona is the subject of a complaint filed with the Commission against the Missouri Pacific Railway Company and other roads constituting transcontinental lines by the Howard Mills Company, of Wichita, Kan. The complaint is abstracted as follows:

The carriers demand and exact a rate of 65 cents per 100 pounds for the transportation of flour from Wichita, Kan., to San Francisco, Cal., and other Pacific Coast terminals, minimum carload weight 50,000 pounds, while at the same time they charge a rate of 55 cents per 100 pounds for the transportation of wheat between the same points, and this differential of 10 cents in favor of wheat against flour exists from all Kansas points to Pacific Coast terminals. It is alleged that from Wichita to Phoenix, Ariz., the rate on flour in carloads is \$1.35 per 100 pounds, on wheat \$1 per 100 pounds, with a carload minimum for each of 30,000 pounds, and similar differentials prevail between flour and wheat from Wichita to other Arizona points. That from San Francisco to Phoenix the rate on flour is 70 cents per 100 pounds, on wheat 58½ cents per 100 pounds, minimum carload for each 30,000 pounds; while from Spokane, Wash., and Portland, Ore., to San Francisco the rates on flour and wheat are the same, namely, 31½ cents from Spokane and 20 cents from Portland. That from Spokane to Phoenix the rate on flour is \$1.01½, on wheat 90½ cents; from Portland the rate on wheat is 90 cents and on flour 70 cents, while generally, in Official and Southern Classification territories, flour and wheat take the same rate. It is claimed that these differentials against flour and in favor of wheat shipped from Wichita to the Pacific Coast terminals and points in Arizona are without justification and should be abolished, it being alleged that such differential operates disastrously to the flour mills of Kansas and unjustly upbuilds the milling interests of the Pacific Coast terminals, which are in competition with the flour mills of Kansas. Violations of Sections 1, 2 and 3 of the act are alleged.

Reargument of the Hearst Coal Case

In consequence of the decision of the United States Supreme Court in what is known as the Chesapeake & Ohio Rebate Case, the Commission has ordered a reargument of the case of W. R. Hearst against the Philadelphia & Reading Railway Company and others, known as the Anthracite Coal Case. The order of the Commission is as follows:

Pending consideration by the Commission of the record in this proceeding and the preparation of its report and opinion therein, the Supreme Court of the United States on February 19, 1906, rendered its decision upon appeals from the Circuit Court of the United States for the Western District of Virginia, entitled "New York, New Haven & Hartford Railroad Company, Appellant, v. the Interstate Commerce Commission," and "The Interstate Commerce Commission, Appellant, v. the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company," relating to the purchase and sale of coal and the transportation thereof by the Chesapeake & Ohio Railway Company, in which decision provisions of the act to regulate commerce as amended are construed and applied; and it appearing to the Commission that rulings announced by the Supreme Court in that decision have important bearing upon issues in this proceeding arising upon the practices of defendant carriers in relation to the purchase and sale of anthracite coal, the transportation of such coal and the compensation actually received by them for such transportation, and it further appearing to the Commission that such issues, presenting questions seriously affecting the operations and business policies of the carriers, as well as the interests of shippers and the general public, should not be determined by the Commission without further argument directed especially to the application in this proceeding of the law as interpreted and declared by the Supreme Court since the case was heard and submitted;

It is ordered that this case be, and is hereby, reopened and assigned for argument at Washington on March 29, 1906, at 10 o'clock a. m.

Investigation Under Joint Resolution of Congress

On March 7, 1906, the President approved a joint resolution of Congress bearing the following title: "Joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discrimination and monopolies in coal and oil, and report on the same from time to time." It will be remembered that this resolution was introduced by Representative Gillespie in the House and was supported by Senator Tillman in the Senate. It is known as the Tillman-Gillespie resolution. The resolution at first related to coal and "other products," but it was finally limited to coal and oil, the latter commodity being put in by the House Committee at the instance of Representative Campbell, of Kansas.

When the resolution was approved by the President, it was returned with a message indicating his belief that additional legislation should be passed specifically authorizing the Commission to take testimony under the resolution and have the laws applying to the attendance and testimony of witnesses and the production of documentary evidence in cases under the act to regulate commerce apply to proceedings under the resolution. Such an amendment was promptly passed by both Houses. Under the resolution the Commission has entered the following order, which paraphrases the provisions of the joint resolution:

"The Commission having been directed by 'joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies in coal and oil, and report on the same from time to time,' approved March 7, 1906, to investigate and inquire into various matters pertaining to the organization, management, operations, property ownership and investments of common carriers, together with the methods pursued and interests held by officers and employees of such common carriers; and it appearing to the Commission that such investigation involves also an inquiry under said act to regulate commerce and the acts supplementary thereto and amendatory thereof, into the management of the business of common carriers subject to the provisions of said acts and the manner and method in which the same is conducted:

"It is ordered that a proceeding of inquiry and investigation be, and the same is, hereby instituted into and concerning the matters and things set forth and referred to in said joint resolution, to wit:

"First—Whether any common carrier by railroad, subject to the act to regulate commerce, owns or has any interest in, by means of stock ownership, in other corporations or otherwise, any of the coal or oil which it, directly or through other companies which it controls or in which it has an interest, transports over its line as a common carrier, or in any manner owns, controls or has any interest in coal lands or properties or oil lands or properties.

"Second—Whether any officer or officers of any common carrier, or any person or persons charged with the duty of distributing cars or furnishing facilities to shippers, are interested directly or indirectly, by means of stock ownership or otherwise, in corporations or companies owning, operating, leasing or having other interests in any coal lands, coal properties or coal traffic, or in any oil lands, oil properties or oil traffic, connected with or transported over the railroads of which they or any of them are officers, or by which they or any of them are employed.

"Third—What systems and methods of car supply and distribution are in effect upon the lines of railway operated by common carriers subject to the act to regulate commerce and engaged in the transportation of coal or oil as aforesaid; whether said systems and

methods are fair and equitable and fairly and honestly applied; and whether such common carriers, or any of them, discriminate against shippers, or persons wishing to become shippers, over their several lines, either in the supply and distribution of cars or in furnishing facilities and instrumentalities for receiving, forwarding or carrying coal or oil as aforesaid.

"Fourth—Whether there is any contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, in which any such common carrier engaged in the transportation of coal or oil is interested, or to which it is a party; and whether any such common carrier monopolizes or attempts to monopolize or combines or conspires with any other carrier, company or companies, person or persons, to monopolize any part of the trade or commerce in coal or oil or traffic therein among the several States, or with foreign nations; and whether or not, and if so to what extent, such common carrier limits or controls, directly or indirectly, the output or price of any coal or oil fields, or the market prices of coal or oil.

"It is further ordered that this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents and papers, as the Commission may hereafter direct, and that the inquiry be carried on in the meantime by such other means and methods as may be deemed appropriate."

The Commission has requested from the committee of the Maryland Legislature having in charge an investigation of the Baltimore & Ohio management a copy of the testimony taken during its recent inquiry.

The Commission also recently held a session in Kansas City, beginning on March 12, in a case entitled "In the Matter of the Transportation of Petroleum and Its Products from Points in Kansas and Indian Territory to Interstate Destinations." It was then announced that further hearings would be held from time to time. While the above entitled investigation was begun before the joint resolution was passed, it appears to be practically covered by the joint resolution. It is understood that the Commission is preparing actively for the preliminary investigation and public hearings which will be necessary to the inquiry directed into the relations of carriers and their officers to coal and oil throughout the country and the systems of car distribution in force on the various lines.

Immunity Cases as Decided by the Supreme Court

On March 12 the United States Supreme Court rendered decisions construing the immunity clause of the Constitution in the following cases: Edwin F. Hale v. William Henkel, United States marshal; Lewis M. Alexander v. United States, and William H. McAlister v. William Henkel, United States marshal. Space forbids extended discussion of these cases. The case of Hale v. Henkel is deemed the most important. In this case an appeal was taken from a final order of

the Circuit Court for the Southern District of New York, dismissing a writ of *habeas corpus* and remanding Hale to the custody of the marshal.

Only that portion of the decision (rendered by Mr. Justice Brown) which relates to the matter of incrimination and immunity will be stated here. The court refers to its decision in the case of Brown v. Walker (161 U. S. 591), declaring the act of February 25, 1903, to afford absolute immunity against prosecution for the offense to which the question related, and deprived the witness of his constitutional right to refuse to answer. The following are some extracts from the decision:

"The suggestion that a person who has testified compulsorily before a grand jury may not be able, if subsequently indicted for some matter concerning which he testified, to procure the evidence necessary to maintain his plea, is more fanciful than real. He would have not only his own oath in support of his immunity, but the notes often, though not always, taken of the testimony before the grand jury, as well as the testimony of the prosecuting officer, and of every member of the jury present. It is scarcely possible that all of them would have forgotten the general nature of his incriminating testimony or that any serious conflict would arise therefrom. In any event, it is a question relating to the weight of the testimony, which could scarcely be considered in determining the effect of the immunity statute. The difficulty of maintaining a case upon the available evidence is a danger which the law does not recognize. In prosecuting a case, or in setting up a defense, the law takes no account of the practical difficulty which either party may have in procuring his testimony. It judges of the law by the facts which each party claims and not by what he may ultimately establish.

"The further suggestion that the statute offers no immunity from prosecution in the State courts was also fully considered in Brown v. Walker and held to be no answer.

"But it is further insisted that, while the immunity statute may protect individual witnesses it would not protect the corporation of which appellant was the agent and representative. This is true, but the answer is that it was not designed to do so. The right of a person under the Fifth Amendment to refuse to incriminate himself is purely a personal privilege of the witness. It was never intended to permit him to plead the fact that some third person might be incriminated by his testimony, even though he were the agent of such person. A privilege so extensive might be used to put a stop to the examination of every witness who was called upon to testify before the grand jury with regard to the doings or business of his principal, whether such principal were an individual or a corporation. The question whether a corporation is a "person" within the meaning of this amendment really does not arise, except, perhaps, where a corporation is called upon to answer a bill of discovery, since it can only be

heard by oral evidence in the person of some one of its agents or employes. The amendment is limited to a person who shall be compelled in any criminal case to be a witness against *himself*, and if he cannot set up the privilege of a third person he certainly cannot set up the privilege of a corporation. As the combination or conspiracies provided against by the Sherman Anti-Trust Act can ordinarily be proved only by the testimony of parties thereto, in the person of their agents or employes, the privilege claimed would practically nullify the whole act of Congress. Of what use would it be for the Legislature to declare those combinations unlawful if the judicial power may close the door of access to every available source of information upon the subject? Indeed, so strict is the rule that the privilege is a personal one that it has been held in some cases that counsel will not be allowed to make objection. We hold that the questions should have been answered.

"The second branch of the case relates to the non-production by the witness of the books and papers called for by the *subpœna duces tecum*. The witness put his refusal on the ground, first, that it was impossible for him to collect them within the time allowed; second, because he was advised by counsel that under the circumstances he was under no obligation to produce them, and, finally, because they might tend to incriminate him.

"Had the witness relied solely upon the first ground doubtless the court would have given him the necessary time. The last ground we have already held untenable. While the second ground does not set forth with technical accuracy the real reason for declining to produce them, the witness could not be expected to speak with legal exactness, and we think is entitled to assert that the subpoena was an infringement upon the Fourth Amendment to the Constitution, which declares that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

"Having already held that, by reason of the immunity act of 1903, the witness could not avail himself of the Fifth Amendment, it follows that he cannot set up that amendment as against the production of the books and papers, since in respect to these he would also be protected by the immunity act. We think it is quite clear that the search and seizure clause of the Fourth Amendment was not intended to interfere with the power of courts to compel, through a *subpœna duces tecum*, the production, upon a trial in court, of documentary evidence. As remarked in *Summers v. Mosely* (2 Cr. & M. 477), it would be 'utterly impossible to carry on the administration of justice' without this writ.

"If, whenever an officer or employe of a corporation were summoned before a grand jury as a witness, he could refuse to produce the books and documents of such corporation, upon the ground that they would incriminate the corporation itself, it would result in the failure of a large number of cases where the illegal combination was determinable only upon the examination of such papers. Conceding that the witness was an officer of the corporation under investigation, and that he was entitled to assert the rights of the corporation with respect to the production of its books and papers, we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.

"Upon the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the Legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not in the exercise of its sovereignty inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation, which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and

franchises, may refuse to show its hand when charged with an abuse of such privileges.

"It is true that the corporation in this case was chartered under the laws of New Jersey, and that it receives its franchise from the Legislature of that State; but such franchises, so far as they involve questions of interstate commerce, must also be exercised in subordination to the power of Congress to regulate such commerce, and in respect to this the General Government may also assert a sovereign authority to ascertain whether such franchises have been exercised in a lawful manner, with a due regard to its own laws. Being subject to this dual sovereignty, the General Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the General Government in this particular in the vindication of its own laws are the same as if the corporation had been created by an act of Congress. It is not intended to intimate, however, that it has a general visitorial power over State corporations.

"Although, for the reason above stated, we are of the opinion that an officer of a corporation which is charged with a violation of a statute of the State of its creation, or of an act of Congress passed in the exercise of its constitutional powers, cannot refuse to produce the books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the Fourth Amendment, against *unreasonable* searches and seizures. A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the Fourteenth Amendment, against unlawful discrimination. Corporations are a necessary feature of modern business activity, and their aggregated capital has become the source of nearly all great enterprises.

"We are also of opinion that an order for the production of books and papers may constitute an unreasonable search and seizure within the Fourth Amendment. While a search ordinarily implies a quest by an officer of the law, and a seizure contemplates a forcible dispossession of the owner, still, as was held in the Boyd case, the substance of the offense is the compulsory production of private papers, whether under a search warrant or a *subpœna duces tecum*, against which the person, be he individual or corporation, is entitled to protection. Applying the test of reasonableness to the present case, we think the *subpœna duces tecum* is far too sweeping in its terms to be regarded as reasonable. It does not require the production of a single contract, or of contracts with a particular corporation, or a limited number of documents, but all understandings, contracts or correspondence between the MacAndrews & Forbes Company and no

less than six different companies, as well as all reports made and accounts rendered by such companies from the date of the organization of the MacAndrews & Forbes Company, as well as all letters received by that company since its organization from more than a dozen different companies, situated in seven different States in the Union.

"If the writ had required the production of all the books, papers and documents found in the office of the MacAndrews & Forbes Company, it would scarcely be more universal in its operation, or more completely put a stop to the business of the company. Indeed, it is difficult to say how its business could be carried on after it had been denuded of this mass of material, which is not shown to be necessary in the prosecution of this case, and is clearly in violation of the general principle of law with regard to the particularity required in the description of documents necessary to a search warrant or subpœna. Doubtless many, if not all, of these documents may ultimately be required, but some necessity should be shown, either from an examination of the witnesses orally, or from the known transactions of these companies with the other companies implicated, or some evidence of their materiality produced, to justify an order for the production of such a mass of papers. A general subpœna of this description is equally indefensible as a search warrant would be if couched in similar terms.

"Of course, in view of the power of Congress over interstate commerce to which we have adverted, we do not wish to be understood as holding that an examination of the books of a corporation, if duly authorized by act of Congress, would constitute an unreasonable search and seizure within the Fourth Amendment."

Uniform Bill of Lading Fight

The uniform bill of lading fight—and the issue seems to have reached such a stage that it can be called a fight—has been taken to Congress. Bills have been introduced in the House and Senate at the instance of bankers providing for a bill of lading which shall be fully negotiable. On March 27 a hearing upon the matter was held by the Committee on Interstate and Foreign Commerce of the House. The bankers were represented by William Ingle and other bankers and their attorneys, Messrs. Pagon and Marshall. The carriers were represented by Messrs. Bond of the B. & O. and B. D. Caldwell of the Lackawanna. The shippers were represented by Messrs. England and Snyder of Baltimore, but did not submit their views. Other hearings will be held at future dates.

The proposed enactment by Congress is the result of the failure of the joint committee of shippers, carriers and bankers to agree upon a satisfactory bill of lading. Several conferences have been held, but the views have been so widely divergent that it seems that all hope of an agreement must be abandoned. It is reported that the uniform bill of lading, as proposed in 1904, will be put in force on July 1 next.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Rights of Shipper Against Express Company

To the Editor of Freight:

SIR—We made a shipment by an express company via a certain stage line, consisting of perishable line of goods, which never reached destination.

We wrote the company concerning the matter, and received word from them that they carried the goods to the end of their line, and that the stage from there was suspended and the goods could not be delivered.

The company also stated that they notified the consignee that the goods were at the end of their line, but did not notify us of the suspension of the stage line.

Now, we would like to know whether or not the company can be held liable for the loss of said goods.

An early reply will greatly oblige.

Very truly yours, WILLIAM JACOBS & SON.
BALTIMORE, February 28, 1906.

A shipment of perishable merchandise was shipped per express via a certain stage line; the shipment never reached destination. Upon inquiry the express company states that it made delivery to end of its line, but the stage service having been suspended the delivery to consignee could not be made. The consignee, however, was notified of the fact that the goods were at the junction point. Query: Rights of shipper against express company.

It must be assumed, first, that the risk of delivery as between consignor and consignee was assumed by the former, and, second, that the express company undertook to carry to the final destination.

An express company is a common carrier. *Sou. Ex. Co. v. Crook*, 44 Ala. 468; *Gulliver v. Adams Ex. Co.*, 38 Ill. 503; *Sou. Ex. Co. v. Newby*, 36 Ga. 635; *Sou. Ex. Co. v. Womack*, 1 Heisk 256; *U. S. Ex. Co. v. Backman*, 28 Ohio St. 144; *Stadhecker v. Combs*, 9 Rich. 193; *Grogan v. Adams Ex. Co.*, 144 Pa. St. 523; *Sou. Ex. Co. v. Glenn*, 16 Lea 472; *Bardwell v. Am. Ex. Co.*, 35 Minn. 344; *Bennett v. N. Ex. Co.*, 12 Ore. 49; *Mather v. Am. Ex. Co.*, 138 Mass. 55; *Pac. Ex. Co. v. Seibert*, 44 Fed. 310; *Am. Ex. Co. v. Pinckney*, 29 Ill. 197; *Am. Ex. Co. v. Baldwin*, 26 Ill. 504; *Buckland v. Ad. Ex. Co.*, 97 Mass. 124; *Lowell Wire F. Co. v. Sargent*, 8 Allen 189; *Christensen v. Am. Ex. Co.*, 15 Minn. 270; *Sweet v. Barney*, 23 N. Y. 335; *Sherman v. Wells*, 28 Barb. 403; *Haslam v. Ad. Ex. Co.*, 6 Bosw. 235.

A common carrier undertakes to carry and also to deliver. *Hutchinson, Carriers' Sec.* 340. *Elliott, Railroads' Sec.* 1,517. *Bodenham v. Bennett*, 4 Price 31; *Duff v. Budd*, 3 Brod. & B. 177; *Parker v. Flagg*, 26 Me. 181; *Lamb v. Camden, etc.*, 2 Daly 454; *Shenk v. Phila., etc.*, 60 Pa. St. 109; *Wilson v. Calif., etc.*, 94 Cal. 166; *N. P. R. Co. v. Bank*, 123 U. S. 727; *S & N. A. R. Co. v. Wood*, 66 Ala. 167; *Bartlett v. Steamboat*, 32 Mo. 256.

The express company being a common carrier, and as such carrier being under a duty to deliver, having

so undertaken, it must accomplish the delivery (such does not appear to be legally impossible in the present case); and, having failed to perform the legal duty assumed by it, it is liable to the consignee for the value of the goods.

It should be noted, however, that some express companies have a rule regarding the shipment of goods destined to "stage points." This rule reads: "All matter for these points desired to be delivered to a stage company, to complete transportation, must be marked, receipted for and way-billed care of stage company at point of transfer."

If this rule was known to the shipper or formed a part of the express receipt, which is not before us, the transportation agency is only under the duty to notify consignee, within a reasonable time, of its inability to make delivery. If the delay be unreasonable, the company is liable; otherwise not. Again, the amount for which the express company would be liable, under the customary receipt (limiting liability) would depend on the State in which suit is brought. (See *FREIGHT*, March, 1906, page 151.)—[ED.]

Book Paper Rates

To the Editor of Freight:

SIR—Within the past thirty days we have had consigned to us a carload of book paper from Hamilton, Ohio, and reference to the special commodity west-bound tariff discloses the fact that the rate on book paper, not surface coated, N. O. S.; is 75 cents a hundredweight carload, carrier's liability limited to 5 cents per pound; also, that the rate on book paper (surface coated or enameled) is 90 cents per hundredweight, carrier's liability limited to 5 cents per pound.

It occurs to us that it might be well for us to know why the carriers should name two different rates on practically the same commodity, occupying the same space, and released to the same valuation; and also if in doing so they are acting entirely within their rights in the matter.

The carload on arrival was assessed at the 90 cent rate, and we have formally made claim for the amount which we claim to be overcharge.

Will you kindly give us an opinion on this point, as it is most important to us, and the principle involved will doubtless affect many other commodities that are daily ordered forward by us from the East.

Your early attention will oblige.

Yours very truly,

GOLDBERG, BOWEN & Co.,

JAMES E. FICKETT, Traffic Manager.

SAN FRANCISCO, Cal., March 1, 1906.

A higher rate on book paper, surface coated or enameled, than on book paper not surface coated or enameled, is not necessarily illegal. For the rates mentioned the carriers' liability is limited to 5 cents per pound. Whether such limitation of liability constitutes a legal exemption is an entirely different question, and

one which is not now propounded. The difference in rating is undoubtedly made because of some assumed greater value of the service to the shipper in the case of the surface coated or enameled paper than in the case of the paper not surface coated or enameled, and this apparently rests upon the assumption that the surface coated paper is the more valuable. If that is not the fact, it would seem that complainants are justified in their contention. However, there may be other circumstances or conditions which would have to be considered in the determination of the question.—[ED.]

Shipped Against a Forged Receipt

To the Editor of Freight:

SIR—We would like to have your opinion on the following case: On June 28, 1905, we shipped by the Clyde Steamship Company one case of dress goods to a well known house in Atlanta, Ga. On demanding payment for these goods October 1, 1905, we were informed that this case has never reached their hands. On investigation we were informed by the Clyde Steamship Company that this case had been shipped against a forged receipt. However, on June 28 they issued to us a bill of lading and duplicate, which we forwarded to Atlanta at the time, and nothing was said about a forged receipt on the day this bill of lading was issued. The case of goods amounted to \$425.42.

The company up to now had waived all responsibility, saying that they never have received the goods on their dock. Lately, however, they offered us 33 1-3 per cent. in settlement of our claim. What we would like to know is, would we have a good chance of recovering, and is the company liable for the amount of our loss?

An early reply will greatly oblige.

Yours very truly,

C. BAHNSEN & Co.

NEW YORK CITY, March 3, 1906.

The question involved in this case is dependent upon the fact whether or not the transportation company received the goods. If the company received the case it is liable (Hutchinson, Carriers, Sec. 98; Merritt v. Old Colony Railroad, 11 Allen 80); the responsibility begins with the completion of the delivery to the carrier. (Missouri Pac. Ry. Co. v. McFadden, 154 U. S. 155); it is ordinarily immaterial whether or not a bill of lading has been issued. (St. Louis, A. & I. Ry. Co. v. Neel, 56 Ark. 279). If the carrier or its agent issued a bill of lading for goods not received by it, it is not liable. (Elliott, Railroads, Secs. 1,417, 1,419; Hutchinson, Carriers, Sec. 123; the schooner Freeman v. Buckingham, 18 How. 182; I. M. Ry. v. Knight, 122 U. S. 79.) If the case was not delivered to the carrier or its authorized agent, it is not liable.—[ED.]

Legality of a Lighterage Agreement

To the Editor of Freight:

SIR—We desire an expression from you as to the legality of an agreement which we have made with the Tide Water Transportation Company, of New York, along the following lines:

This company has agreed to take all of our shipments over differential lines, such as Southern Pacific

Railway, National Despatch and Central Vermont, Morgan Steamship Company, Old Dominion Steamship Company, Maine Steamship Company, etc., with whom they have agreements, from our works at Elm Park, S. I., to the respective transportation companies in New York city at no cost to us except in such cases where the through rate does not absorb the transfer charges, which would then cost us 3 cents per hundred.

Their ability to do this is based on their statement that lighter charges from Elm Park to New York are absorbed without being added to the regular New York rate. Furthermore, in view of their lack of facilities at the present state of affairs, they have agreed to allow us 3 cents per hundred on all goods going over the above lines which we may lighter to a common point, namely, their pier, 30 East River.

We have expression from the differential lines above named, stating that an agreement exists between the Tide Water Company and themselves which permits the Tide Water to make such arrangements with outside parties as we have noted herein.

Will you therefore kindly give us your written opinion as to the ability of steamship companies and the Tide Water Transportation Company to make us such an offer without conflicting with the Interstate Commerce Law or the statutory law of the State, as we do not wish to violate any laws for the sake of a few dollars which might accrue from such an agreement.

We would also ask you to advise us if it would be perfectly legal for us to accept from the above mentioned transportation companies regular lighterage charges for the carrying of carload or less than carload lots from our works at Elm Park to their respective piers by our own lighter. Under some conditions it is the custom of both railway and transportation companies to call for carload lots, but not less than carloads.

If there are any further points which you may wish on the subject, we would be pleased to furnish them, but think the above covers everything that is necessary.

Thanking you in advance, and awaiting your earliest advices, we remain,

Yours truly,

STANDARD VARNISH WORKS,

R. A. VAN KIRK, Traffic Manager.

NEW YORK, March 5, 1906.

We have obtained a memorandum of the tariff regulations on file with the Interstate Commerce Commission, which reads as follows:

Southern Pacific Company "Morgan Line" Joint Freight Tariff No. 705, I. C. C. No. A-647, effective January 3, 1905, names rates from New York and defined Atlantic seaboard territory to Texas stations. Supplement No. 11 to this tariff provides as follows:

"Rules governing lighterage and transfer service in New York harbor and absorption of arbitraries from contiguous points to Morgan Line pier upon freight consigned to Texas points."

"Lighterage limits shall include all points within the city limits of Brooklyn and all points on the water front, as follows:

* * * * *

"Points on north and east shore of Staten Island between Port Richmond and Clifton, both inclusive."

Elm Park, S. I., point of shipment in question, adjoins Port Richmond on the west, and is apparently outside of the lighterage limits as described.

The supplement referred to further provides:

"Less than carload shipments originating at points within lighterage limits must be delivered at Morgan Line pier, and no transfer, lighterage or transportation charge shall be absorbed."

"Effective April 11, 1905. Carload shipments may be lightered or transferred free from all points within lighterage limits, except points in Borough of Manhattan, by the authorized lighterage or transfer agents of initial lines, and maximum allowance of 3 cents per 100 pounds may be made to other lighterage or transfer agents for the performance of the service. All shipments originating in Borough of Manhattan within lighterage limits must be delivered at Morgan Line pier, and no transfer, lighterage or transportation charge shall be absorbed."

"A full carload must originate at one place to be entitled to free lighterage or transfer."

"Heavy pieces, exceeding 3 tons each in weight, shall be subject to special contract."

"Upon carload shipments originating at points in New York harbor located on the water front beyond lighterage limits, 3 cents per 100 pounds may be paid outside lighters."

The destination of the traffic is not indicated further than by naming the initial lines. The above rules, as stated, apply to traffic destined to stations in Texas. The same company, "Morgan Line," has a tariff from New York and seaboard territory to Louisiana common points, which does not contain the above rules, but has the following note:

"Note.—Shipments from Brooklyn, Staten Island, Jersey City, Hoboken and other points within the recognized lighterage limits of New York harbor will be lightered or transferred at carrier's cost."

"Upon coffee, and sugar from Yonkers, N. Y., and points in New York harbor, allowance for transfer service will be 6 1-5 cents per 100 pounds."

Provisions similar to the last above are shown in circular of the Morgan Line (Southern Pacific I. C. C. No. A-672) covering traffic from New York to points in Oklahoma, Indian Territory, Missouri, Kansas, Nebraska, Colorado and Utah, and in Circular I. C. C. No. A-673 covering shipments from New York to New Mexico and Arizona, each of which circulars, however, also contain the following:

"Less than carload shipments to one consignee and destination may be concentrated at Galveston for re-forwarding in full carloads and receive the benefit of published carload rates from points of origin in seaboard territory."

Southern Pacific Circular I. C. C. No. A-674, effective February 1, 1906, covering Pacific Coast traffic, provides for westbound shipments as follows:

"Carload shipments under rates named in S. P. Company's Sunset Route Westbound Tariff No. C-22, I. C. C. No. A-609, amendments thereto, or superseding issues thereof, will be lightered or transferred free from points in the boroughs of New York more conveniently located to receiving stations of competitive lines, and from Jersey City, Hoboken and all other points within recognized lighterage limits of New York harbor, to Morgan Line pier. When transfer of any westbound freight from points described is performed by shipper the cost of the service will be assumed by the carrier."

"In determining carload versus less than carload rates, the quantity taken into ship for one consignee

will govern the through rate charged, except that the less than carload shipments to one consignee and destination may be concentrated at Galveston for re-forwarding in full carloads and receive the benefit of published carload rate from points of origin in seaboard territory."

Rules similar to the last above are published in Southern Pacific Company Circular I. C. C. No. A-675, effective February 1, 1906, covering traffic to China, Japan and Australia, on carload shipments under rates named in Transcontinental Freight Bureau Tariffs Nos. S. R. 782 (I. C. C. No. 2,398) and S. R. 335 (I. C. C. No. 638), amendments thereto or superseding issues thereof.

It is noted that Supplement No. 2 to New York Central & Hudson River Railroad Circular No. 2,668, I. C. C. No. B-3,736, effective October 3, 1905, specifically extends the lighterage limits in New York harbor to include Elm Park, S. I., so that the circulars of the Morgan Line herein referred to which provide for lighterage within "recognized lighterage limits" also include Elm Park.

While the other differential lines mentioned in your letter, viz., National Despatch Fast Freight Line, operating via the Central Vermont Railway; Old Dominion Steamship Company, etc., do not appear to have on file schedules providing specially for absorption of lighterage, it is understood that the published rates from New York via these as well as other lines, apply from all points in New York harbor within recognized lighterage limits, and, therefore, include lighterage from such points.

Competition That Does Not Compete

To the Editor of Freight:

SIR—We would be pleased to have your opinion on the following application of rate: The fifth class rate, Minneapolis to Lake Benton, Minn., is 22½ cents via the C., St. P., M. & O. and C. & N. W. railways. The same lines name rate of 20 cents on beer carload Minneapolis to Watertown, S. Dak., such business being handled through Lake Benton at the convenience of the railroad companies, as they state, on account of heavy grades on their other line from Tracy to Watertown, in and around Gary, S. Dak. We maintain that the points located on the line over which this freight is transported become the intermediate points with Watertown and are entitled to the same rate. Further, the distance to Lake Benton is 58 miles shorter than to Watertown via their shortest route, over which they claim the rate is made.

The above companies have refused our claim for overcharge on business to Lake Benton based on the 20 cent rate on the ground that rate was made to compete with the M. & St. L. Ry. and that Lake Benton is not intermediate.

Thanking you, we remain, Yours truly,
MINNEAPOLIS BREWING COMPANY.

MINNEAPOLIS, Minn., March 6, 1906.

It should be first noted that the rate from Minneapolis to Lake Benton is an intrastate rate, and the question of its reasonableness is a matter for the determination of the Minnesota Railroad Commission. The rate from Minneapolis to Watertown, S. Dak., is

an interstate rate and jurisdiction of it is under Federal authority.

Assuming, for the purpose of illustration, that all the freight from Minneapolis to Watertown, S. Dak., is carried through Lake Benton, the long and short haul (Section 4) of the Interstate Commerce Act could not be made to apply to the Minneapolis-Lake Benton rate for the reason that that act confers no jurisdiction upon the Commission to consider intrastate rates. The route via Lake Benton is longer, and is apparently "the route usually traveled."

To raise the questions presented, it would be necessary to ascertain whether or not the same discrimination existed between two South Dakota points, say Elkton and Watertown. In such cases the Interstate Commerce Commission would have jurisdiction. To consider the reasonableness of the Minneapolis-Lake Benton rate, there might be introduced in evidence the rate from Minneapolis to Watertown in a proceeding before the Minnesota Commission.

As far as the alleged competition between the two carriers is concerned, we are inclined to doubt if this contention is in force and effect. Both carriers are part of the so called Northwestern Line, and it has been stated by competent authority that "the equity of the Chicago & Northwestern in the undivided profits of the Chicago, St. Paul, Minneapolis & Omaha Railway has been and is considerable." It has been stated by the same authority that on May 31, 1903, "the Chicago & Northwestern held \$5,380,000 preferred and \$9,320,000 common stock of that road."

An Interesting Demurrage Case

To the Editor of Freight:

SIR—In the month of January we paid some \$200 demurrage to the local terminal company here as demurrage on cars of freight which we were unable to unload. The ordinances of the city prevent the terminal company from setting more than three cars per day on the side track at our building; that is, they cannot move cars across the street on which our building is situated between the hours of 7 a. m. and 10 p. m.; thus we can only unload three cars a day. Our facilities are such as to allow us to unload from five to eight cars if they could be set in as fast as they are unloaded.

Can we be compelled to pay demurrage on cars standing in the yards of the terminal company under these conditions?

Yours truly,

THE BROWN-HURLEY HARDWARE COMPANY.

DES MOINES, Ia., March 7, 1906.

In the case of the Pennsylvania Millers' State Association v. Philadelphia & Reading Railway Company et al., the Interstate Commerce Commission held that reasonable time for unloading *after the cars have been placed for unloading and notice of such placing has been given to consignee or other proper party must be allowed.* That principle applies in this case. Until the cars are properly placed for unloading it is difficult to see how the demurrage charge can accrue. It is not

the fault of the consignee that the city ordinance prohibits the movement of cars across streets during the day or early evening.

This case, however, is not without some difficulty. It appears that the siding of the inquirer accommodated three cars; that by reason of a municipal ordinance cars can only be placed on, or removed from, the siding at night. The capacity of the inquirer to unload is eight cars per day; the capacity of the carrier to place cars for unloading is not stated. It is a case where a superior force prevents either of the innocent parties from doing that which they otherwise would (it is assumed that the carrier has equipment necessary to place and remove eight cars per day). It is safe to say that this ordinance was known equally to both parties.

It is, or ought to be, the idea of demurrage rules that, before demurrage shall begin to accrue, the goods must be in proper position to be removed by the consignee and retained in that position a reasonable length of time. If the consignee negligently detain one car so that the second cannot be placed, he ought, perhaps, be amerced for the detention of the two cars. The main idea of demurrage, as we understand it, is to compel a consignee to exercise all reasonable diligence in discharging the cargoes consigned to him.

If, in this case, the consignee exercised that diligence which prudent and well equipped men would exercise under similar circumstances, he is absolved from the payment of demurrage.

As the geographical jurisdiction is under the Illinois & Iowa Car Service Association, the manager of which in his public utterances has loudly and vociferously lauded his own ability to do justice to all parties and that his office is conducted upon equitable grounds, we see no better opportunity for him to put into practice those equitable rules for refund about which we hear so much and see so little, and thereby become an exponent of what we have been recently taught to name "the square deal."

In a recent post-prandial address he is reported to have said: "Those who have facilities for the prompt handling of their business have no necessary knowledge of even the existence of car demurrage rules." Here appears to be one who has facilities "for the prompt handling of their business" and yet received the "necessary knowledge" of the existence of car demurrage rules to the extent of \$200. We cordially recommend the inquirer to state the case to Ashley J. Elliott, Peoria, Ill., with request for refund, and to advise the public, through us, of the results. We shall thereby know whether or not the English "as she is spoke" means as it sounds.

Subscribers who do not receive their copies of FREIGHT promptly each month will oblige the publishers by acquainting them with that fact without delay.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Must Furnish Suitable Cars

A shipper delivered to a carrier a carload of potatoes and accompanied the car in order to keep fire if necessary to prevent the potatoes from freezing. In transit rain leaked through the roof of the car, which, it appears, was old and leaky, wetting the potatoes, and caused them to be damaged. The plaintiff secured judgment in a lower court for \$237.87.

The contract for shipment contained the two following conditions:

"(1) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto by causes beyond its control; or by floods or by fire from any cause or wheresoever occurring; or by riots, strikes or stoppages of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet or decay; or from any cause, if it be necessary or is usual to carry such property upon open cars. * * * (3) No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee."

The Supreme Court of Michigan in deciding that the carrier might stipulate for immunity from damages upon the connecting road, yet the initial carrier is responsible if it fail to furnish suitable cars for the entire trip, said:

"The single question argued by the defendant's brief is that the conditions quoted limit its liability to damages sustained while the potatoes were being transported over its road, for the reason that plaintiff has so contracted. It is raised by the refusal of the court to so instruct the jury to render a verdict for the defendant. We have repeatedly held that a carrier may stipulate for immunity from responsibility for damages resulting upon connecting roads after his discharge of his full duty of delivering them to another road. * * * These cases do not militate against the plaintiff's claim. The contract for defendant made it obligatory to furnish a suitable car for the entire trip, and deliver the car and cargo to the connecting line in good condition. It did not fully perform its duty of delivering to the connecting carrier the potatoes in a suitable car adapted to their transportation. This was a breach of their contract, and they were liable for the consequences." * * * *Kibby v. M. C. R. Co.*, 105 N. W. 769.

Examination Is Not a Delivery

A decision of more than passing importance has been handed down by the Supreme Court of Appeals of the State of West Virginia. The court has decided that it is neither an actual nor a technical delivery of property to allow the same to be examined by consignee.

The case arose in the shipment of two carloads of apples from a West Virginia point to Elgin, Ill.;

the shipment was routed over the B. & O. & S. W. and connecting lines, and was covered by an order bill of lading and a notification to party in Chicago. Drafts, with bills of lading attached, were made upon the consignee, and the drafts were discounted by the initial bank. Upon arrival of the cars at destination, the consignee's agent was allowed to inspect the apples without producing the bills of lading or showing any title or right of possession to the shipment. The shipper and the carrier both were notified of the rejection of the shipment, and, after some correspondence, the carrier disposed of the shipment and realized thereon considerably less than the value claimed. The suit was instituted upon the theory that the final carrier having allowed the consignee to inspect amounted in law to a conversion of the shipment, and that the inspection amounted to an unauthorized delivery of the property. The court, in disposing of the case, said:

"That a common carrier is liable for a wrongful delivery, if in any way at fault, is perfectly clear. Such act may be treated as a conversion. Common carriers are bound to exercise the highest degree of care in this respect. 'No circumstances of fraud, imposition, or mistake will excuse the common carrier from responsibility for delivery to the wrong person.' (Hutchinson on Carriers, Section 344.) To the same general effect, see *North Pennsylvania R. R. Co. v. Commercial Bank*, 123 U. S. 727, 8 Sup. Ct. 266, 31 L. Ed. 287, and *Indianapolis & St. L. R. R. Co. v. Herndon*, 81 Ill. 143, cited by counsel for appellant. Of course, this general rule, like all others may be subject to some slight apparent exceptions, which need not be noticed here. But, if there was no delivery, the rule of law relied upon has no application. The property was never out of the possession of the defendant until sold, or removed for sale, some time after the inspection. Sharp's agent was simply permitted to enter the cars, set barrels out in his wagon, open them, and examine the apples. Then they were put back in the car and it was resealed by the agent. It may be true that he had no right to do so, and that the defendant did wrong in permitting the inspection, no evidence of title or right of possession having been shown; but it is a non sequitur to say, upon these facts, there was a delivery. It may have been an authorized act of dominion over the property; but whose act was it? Clearly that of the railroad company, for the property was still in its actual and legal custody. It never parted with its possession. Not every wrongful act on the part of a common carrier authorizes an action against it as for conversion. Where goods intrusted to a common carrier are injured only, the owner's remedy is for damages for the injury, not their value. (*Hutch. Com. Car. Sec. 770a.*) For delay in delivery the action must be for damages resulting, not the value of the property. (*Hutch. Com. Car. Sec. 328; Ryland & Rankin v. C. & O. Ry. Co.*, 55 W. Va. 181, 46 S. E. 923.) What is the nature of the plaintiff's injury here? Inspection did not injure the property, so far as disclosed. It prevented the consummation of a sale to Sharp. Can that constitute the basis of an action for the value of the property? That it could not is so obvious that no such claim is made, and this branch of the contention is founded upon the extremely fanciful theory of a technical delivery, for which no authority has been found. (*Dudley v. C. M. & St. P. Ry. Co.*, 52 S. E. 718.)

IMPORTANT DECISIONS IN BRIEF

The Harter Act relieves the owner of a vessel from liability for injury to the cargo where such injury is a result of the negligence of the owner's servants in the navigation and management of the ship. But it does not make a contract of shipment valid by which the owner is entitled to a share in the general average, which has arisen by reason of negligence of the master and crew; and if such provision be placed in the bill of lading the same is void. (*N. Y. & C. M. S. S. Co. v. Ansonia Clock Co.*, 139 Fed. Rep. 894.)

If a contract for the shipment of live stock permit the shipper of it free transportation in the caboose, he is a passenger as long as he rides in that car; and the conductor of the train has no authority to ask the shipper to ride on the engine. (*I. C. R. R. v. Jennings*, 75 N. E. Rep. 457.)

The Supreme Court of Alabama has held that the statute of that State did not confer upon a railroad commission authority to order a change of location of a railway station. (*State v. N. C. & St. L. Ry.*, 39 Sou. 984.)

Where a carrier is unable, by reason of an unusual amount of business, to furnish equipment, such failure is not a ground for punitive damages, and under such circumstances and in the absence of a special contract, the shipper is not entitled to damages. The court said: "The claim is not based on a contract, but on the ordinary public duty of the carrier to receive and transport promptly all freight offered. Promptness in transportation is of great and increasing importance, and hence common carriers should be required to use every reasonable means and to take every reasonable precaution to insure it. They should not only have ample rolling stock for the prompt dispatch of all passenger and freight business usually to be expected, but they should by all reasonable forethought and effort prepare for unusual demands for transportation. And such forethought requires not only a study of their own business, but of the industries, the development and progress of the country whose carrying business they undertake. But this duty does not extend to the acceptance and immediate transportation of freight at all hazards and in all circumstances. The true rule is thus stated in 5 A. & E. Ency. Law, 168: 'Where there is a sudden and unusual press of business, arising from exceptional causes, and which the company could not reasonably be expected to have anticipated, it is not liable for the delay thereby necessitated, unless it had specially contracted to furnish such transportation; it is bound to provide facilities for such transportation only as might reasonably have been anticipated.'" (*Mauldin v. S. A. L. Ry.*, 52 S. E. 677.)

It was held that where the facts concerning the loss of certain goods caused by fire while they were in a depot of the carrier are undisputed, the question of negligence becomes solely one of law, for the determination by the court. (*Braunton Robertson v. S. P. Co.*, 83 Pac. 265.)

Where goods have arrived at destination and the consignee is not present to receive freight, notice by mail of the arrival of the goods was held to be sufficient. The court said: "True, it might be said the defendant should have notified the consignee immediately of the arrival of the goods, so that he might have removed them between the hour of their arrival and the time when the fire occurred. In this respect all that would be required would be that notice be sent through the mail where the consignee was not present to receive verbal notice." (*Braunton Robertson v. S. P. Co.*, 83 Pac. 265.)

The Supreme Court of South Carolina has held that, under a statute requiring railroad commissioners of that State to make a schedule of rates for railroads and requiring railroads

to post the schedules, that thirty days is a reasonable notice. (*Johnson v. S. A. L.*, 52 S. E. 644.)

A carrier negligently failed to remove from a cattle car a placard reading "Southern cattle"; this placard indicated that the cattle were diseased, and, as a matter of fact, the placard was an old one, which had not been removed; it was held that the carrier was liable for damages, as the consignment under consideration brought less money than they would have brought by reason of the placard, and it was also held that the measure of damages was the difference between the market value of the cattle on arrival at destination without the placard and the price which the cattle brought. (*Wabash R. Co. v. Campbell*, 76 N. E. 346.)

If one ship feed to cattle, and the consignee, after the arrival of the feed, apply to the carrier's agent, informing him that he is out of feed, and that the failure to get it would mean a great loss to him because he had no other feed, and that through the fault of the agent the delivery is not made, the consignee is entitled to recover special damages; and this notwithstanding the fact that notice of the peculiar facts was not given to the carrier at the time of making the contract for the shipment. (*Bourland v. C., O. & G.*, 90 S. W. 483.)

A local belt railway is not a connecting carrier, and delivery to it of merchandise by the initial carrier is not a delivery to the connecting carrier. (*T. & P. Ry. Co. v. Scroggin and Brown*, 90 S. W. 521.)

The Court of Civil Appeals of Texas has held that the rush of business is not a defense for failure to transport freight with reasonable care and diligence, and such failure being excused only by the act of God or through *vis major*. (*T. & P. Ry. Co. v. Felker*, 90 S. W. 530.)

Where there is no provision of the statute or regulation by the railroad commission providing for the manner in which freight shall be transferred from one carrier to another, the carriers are allowed to make such arrangement as they see fit, provided that no unreasonable method is adopted. (*T. & P. Ry. Co. v. Scott & Robertson*, 90 S. W. 532.)

The Supreme Court of Virginia has held that a common carrier is an insurer of the goods which it undertakes to carry for hire. The code of Virginia provides that no agreement made by a transportation company for the exemption from liability for injury or loss occasioned by its own negligence or misconduct as a common carrier shall be valid. After discussing the authorities the court said: "The conclusion of the whole matter may, in our view, be summed up as follows: At common law the carrier could not by contract limit or restrict his liability for injury or loss caused by the negligence of himself or his servants. The object of the Legislature was to give to this recognized common law principle the force of a statute, and it would indeed be a singular outcome of an effort on the part of the Legislature to give an added sanction to the common law if, by ingenious construction, the power to limit should be deduced from the prohibition to exempt." (*C. & O. Ry. Co. v. Beasley*, 52 S. E. 566.)

A passenger is entitled to a reasonable time and opportunity to remove his baggage after arrival at destination; what constitutes a reasonable time is a question for the jury. (*Zeigler v. M. & O. R. Co.*, 39 Sou. 811.)

The statement in a bill of lading that a carload of merchandise is received in apparent good order is only prima facie evidence of that fact, and evidence is admissible to show that the contents both before and after being loaded into the car were in bad condition. (*Foley v. L. V. Ry. Co.*, 96 N. Y. Supp. 182.)

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

The Alabama Car Service Association report shows that that association handled 752,982 cars during the last year, as against 708,680 in the year previous.

The Gulf & Ship Island Railroad has made some important changes in freight rates which, generally speaking, are reductions from existing tariffs.

The Illinois Central has perfected plans for its terminal at Birmingham.

B. B. Comer, president of the State Railroad Commission, is making a very active canvass for the governorship.

The Tennessee-Ohio Transportation Company has been organized in Decatur to do a freight business between Decatur and the principal cities of the Ohio River, and some of the cities of the Mississippi. George Holland, of the Holland-Blow Stave Works, is the manager.

At a meeting of the lumber manufacturers of the South, at Mobile, steps were taken to organize for the purpose of adopting a uniform system of grading and for export trade.

ARKANSAS

Through an error in assessment, the Armour Car Company, which operates hundreds of cars in and through Arkansas yearly, will escape taxation for the present year, while the Armour Packing Company, which does not own a single car used in transporting freight, is assessed \$24,000 on 48 cars charged to that company. In making its assessment of private car lines operating in this State the Board had to rely on information gathered from the companies themselves.

ARIZONA

Freight Traffic Manager Edward Chambers, of the Santa Fé, and William Sproule, freight traffic manager of the Southern Pacific, have had two conferences with the Phoenix Chamber of Commerce committee which asks the Santa Fé to give that city main line freight rates.

CALIFORNIA

The movement of oranges from Southern California started about the middle of March, and all of the lines from the Coast are handling immense consignments to the East. The total shipment from Southern California is expected to reach 35,000 cars.

The connecting link between the Southern Pacific Railroad and the California Northwestern is to be built near Santa Rosa.

The San Pedro has arranged with the Santa Fé for an interchange of traffic at Los Angeles.

The Clark road is now within 60 miles of Bull Frog, Nev., and is already handling machinery, lumber and merchandise for the Bull Frog country.

Claim agents of the Southern Pacific & Santa Fé state that immediately after the issuance of the injunction forbidding the payment of rebates on freight rates the shippers of fruit began to put in what are alleged to be enormous unfounded claims for "damages" to fruit in transit. The implication is that the fruit men are determined to retain the improper advantages to which they have been accustomed, and are taking this method of getting them. The shippers say the railroads are merely trying to create public sentiment by making

charges of crookedness against them. It is estimated that the fruit claims against the Southern Pacific and the Santa Fé aggregate \$500,000.

COLORADO

On April 1 the Rio Grande and Santa Fé railroads will make their usual summer reduction of 25 cents per ton on present freight tariffs, permitting the Colorado Fuel & Iron Company to keep its mines in the vicinity of Florence working steadily. The Fuel Company will make another reduction of 25 cents per ton to its wholesale dealers in Kansas, Nebraska and other points.

New rate sheets have been issued by the Rio Grande and Colorado Midland. The object of the reduction is to wipe out discrimination against Denver manufacturers in the matter of freight rates to Grand Junction and intermediate points.

CONNECTICUT

The Ontario & Western has established the Ontario Central Despatch Line, with offices in Boston and New Haven, for the purpose of getting its share of the 1,000 cars that leave the New York, New Haven & Hartford Railroad for points West daily.

President Mellen's two-cent passenger rate has been received with joy throughout the State.

The Merchants' Line, which is operating between New York and Bridgeport, is under the management of Moulton, Lake & Orr, of New York, and its landing place in New York is at Pier 14, East River.

The Consolidated road has abandoned its card scheme for showing the destination of cars, the plan having been found impracticable.

The North Shore Transportation Company, of Greenwich, has been incorporated with a capital stock of \$30,000. The object of the company is to transport passengers and freight across New York harbor and Long Island Sound.

The Consolidated will abandon Plainville as a freight transfer point. Freight will be sent to New Haven and the transfer work done there.

It is expected that there will be a general reduction of freight rates by the New Haven road in the near future. One of the features of the reduction, it is reported, will be the rate on coal.

DELAWARE

The Pennsylvania Railroad has laid off 130 men at its car shops at Todds Cut. The company is reported to be considering the advisability of moving the plumbing and steamfitting men to Philadelphia.

At Edge Moor the Pennsylvania will greatly increase its freight yards. The extension will be toward the river, where the Government is building a new bulkhead.

FLORIDA

Work is progressing steadily on the Seaboard Air Line Railway yard at Jacksonville. The improvements will cost \$500,000.

The steamer Thetis is now landing goods from New Orleans to points on the Suwanee River regularly.

GEORGIA

Work has begun on the new freight warehouse of the Georgia Southern &

Florida Railroad at Valdosta. It will be completed in ninety days.

On account of the absence from the city of Attorney W. A. Wimbish, Attorney General Hart requested that the trial of the case of the Southern, Central and Atlantic Coast Line railroads against the State Railroad Commission be deferred until some time after April 2. Attorney General Hart's request was granted, and the case will probably be tried some time in May. The case is the result of an injunction granted the railroads by Judge Pardee some time ago, restraining the State Commission from putting into force certain reductions in freight rates, which had been authorized by Circulars 316, 317 and 318, issued by the commission. These circulars make a reduction of about 10 per cent. in freight rates, and the roads are making a stubborn fight to prevent them from being enforced. The railroads will make every effort to have the injunction granted by Judge Pardee sustained, in which event the reductions in freight rates made by the commission would not go into effect. The stove rate case, which will come up Monday, was also deferred.

Much is expected of the Atlanta, Birmingham & Atlantic Railroad, which will give Atlanta and Birmingham a new and independent route to the sea, connecting with an independent line of steamers which will ply between Brunswick and Philadelphia, New York and Boston. H. M. Atkinson and Preston Arkwright, of Atlanta, and their associates, have applied for the incorporation of the Brunswick Steamship Company, to operate a line of steamers between Brunswick, New York and Boston. The capital stock of the new company will be \$500,000.

Georgia Central has given a contract to the South Atlantic Car and Manufacturing Company for 1,000 freight cars, to be built at the Savannah shops.

The new freight yards of the Atlantic Coast Line at Waycross will be increased from 1,200 to 2,000 cars.

Atlanta is much disturbed because Congress may remove the \$200,000 bonus for the running of a fast mail between New York and New Orleans.

Savannah merchants continue to complain of delays in shipments from Savannah to Florida points beyond Jacksonville.

The Atlanta Freight Bureau has made a protest against the slow handling of freight by the railroads. Beaumont Davison, David Kirkland, E. K. Hudson and H. T. Moore were appointed a committee to investigate the matter.

ILLINOIS

The P. & P. U. is to build freight yards at Peoria costing \$200,000.

Forty Missouri River jobbers appeared before the Western Trunk Line Committee in Chicago recently and asked for a reduction in the through rates from New York to the West. Commissioner W. T. Trickett, of the Kansas City Freight Bureau, acted as spokesman.

Four new freight trains will be put on between Peoria and St. Louis by the Chicago, Peoria & St. Louis Railway.

Freight rates on automobiles west of Chicago have been reduced by the Western railroad companies after extensive negotiations with the traffic department of the Association of Licensed Automobile Manufacturers.

There is still a possibility of a rate

war in the Chicago-New York traffic among the Eastern trunk lines. The Erie management has refused to arbitrate the question of the differentials and the Central Freight Association has reopened the subject.

INDIANA

The Vandalia will have a new freight depot, additional freight tracks and yard room at Indianapolis.

The Notre Dame University has made arrangements with the Iowa State University and with the University of De Pauw for debates on the question, "Resolved, That a commission should be given power to fix railroad rates."

The Southern Railway is to build a new freight station at Evansville.

Traffic officials at Indianapolis state that the coal traffic on Western roads is fully 15 per cent. greater than it was a year ago.

Early in April the Indianapolis Southern officials expect to handle business out of Indianapolis.

IOWA

Two freight cars, one belonging to the through line and the other to the Canadian Pacific, are the cause of much trouble to Sheriff Canning, of Council Bluffs. The cars were seized while in the Union Pacific yards here to insure the satisfaction of a claim for \$1,000 by O. J. McManus, based on damages to live stock and other property in shipment to Canada. The Union Pacific sought to recover them for its own use, but McManus put up a \$2,000 bond and they remained here. Now the sheriff has been served with notice by the Union Pacific to take the cars off its tracks, and a bill of \$100 for storage has been filed against him. As the official has no locomotive or derrick, he cannot well move the cars, and he would not know where to put them if he could. He has decided to do nothing except what the court may order. Meanwhile the cars will not be permitted to depart until the suit against the two railroad companies is decided.

New classifications of freight made by the Iowa Railroad Commission will greatly benefit the shippers of Dubuque and other parts of the State. In several commodities the new classifications mean a reduction of about 25 per cent.

KANSAS

By refusing to reduce rates as ordered by the Railroad Commission of Kansas, the railroads are testing the legality of the Kansas maximum rate law passed a year ago. They have brought no action to test the law, but the effect of their policy will be the same thing.

Early this year the Railroad Commission ordered in effect a 5 per cent. reduction in grain rates. The railroads ignored the order, whereupon the commission sought the aid of the courts to compel compliance. This struggle will last a long time.

L. B. Taggart, a New York freight broker, visited Kansas City for the purpose of forming a freight concentrating bureau, with general receiving and forwarding headquarters at Buffalo. Under the arrangement he would have freight from all over the East billed to him from point of origin to Buffalo at the local rates under the New York State distance tariff. When these shipments reach Buffalo they would be consolidated into carloads and forwarded from one consignor to one consignee, thus aiding Kansas City jobbers.

KENTUCKY

The Southern Railway will spend \$50,000 in improving its terminal at Louisville.

Early in the month there was a serious freight blockade on the Big Four in Jeffersonville and Louisville.

Efforts are being made to induce the railroads to reduce the fares to Louisville during "Homecoming Week" next June.

LOUISIANA

A record run for a freight train was made over the Southern Railway and the Louisville & Nashville in carrying the household furniture and equipment of the Eighth United States Infantry from Washington to New Orleans. The distance was covered in twenty-eight hours. The train consisted of eleven box cars and made an average of 50 miles an hour.

New Orleans explains the fact that Boston exceeded it in the amount of its foreign commerce in 1905 by saying that its recession was caused by the quarantine disturbances last summer.

The claim of the Yazoo & Mississippi Valley Railroad that it has a right to build an additional track up Natchez street, Baton Rouge, will be determined by the courts.

MASSACHUSETTS

The Boston Associated Board of Trade has adopted resolutions condemning the New York, New Haven & Hartford Railroad for its attitude on freight charges for tank car shipments of oil. The Interstate Commerce Commission also was informally condemned.

A better understanding is gradually being evolved between Boston merchants and the agents of transportation companies relative to complaints of delays in handling freight out of Boston to points in Connecticut, Central New York and Pennsylvania.

The Boston Herald says that by the construction of approximately 150 miles of railroad, as the crow flies, will give to Boston a key to the export grain trade which will enable that city to more than outclass any other Atlantic seaport except, possibly, New York city. The line suggested is from Rotterdam Junction to Oswego or North Fairhaven, N. Y.

Eight employees of the Boston & Maine were recently arrested on a charge of looting freight cars.

MARYLAND

Mr. Bouchet, of Baltimore, has introduced a bill in the House providing for the appointment of a commission of five members by the Board of Public Works to inquire into the freight rates by water of the steamboat, steamship and railway companies which carry and deliver freight to and between Baltimore and all points on the Chesapeake Bay and tributaries within the State, and to make recommendations to the next General Assembly.

The freight service over the Western Maryland Railroad on the connecting link began March 15.

The Baltimore Board of Trade, by resolution, opposed under any circumstances a bill which will give to the Interstate Commerce Commission or to any public body the right to fix rates of freight.

An ordinance has been introduced in the First Branch of the Baltimore City Council to fine railroad companies \$5 for each car which remains on the tracks in

the city streets when not in actual service.

Work is now in progress on the new docks in Baltimore.

The South Baltimore Steel Car & Foundry Company has an order from the Norfolk & Western Railway Company for 2,500 gondola cars.

The Merchants & Manufacturers' Association Committee recently visited Annapolis to look into the matter of the proposed cut-off of the Pennsylvania Railroad. Some of the members fear that the Pennsylvania may, by means of its cut-off, attempt to divert business from Baltimore. As explained to the Senate Corporation Committee by representatives of the railroad company, the cut-off will leave the Northern Central near Sherwood, running easterly to Towson, passing north of that place and going in the direction of Stemmers Run.

Recent developments indicate that the harmony compact between the Norfolk & Western and Chesapeake & Ohio have been dissolved. Recent reductions make the two roads equal as to coal rates to all points, including Richmond and Tidewater.

The Baltimore Sun thinks that the present controversy between the State and the Baltimore & Ohio Railroad Company is well ended. The State invested \$500,000 in the Washington branch, upon which it received a stock dividend of \$50,000, and 10 per cent. dividends for about one-half a century. Ten years ago the payment of the dividends ceased, and in that time only one dividend—that of 6 per cent., which was declared recently—has been paid. The stock has been carried upon the State's books at a valuation of \$1,100,000, and the Sun apparently thinks that the State, through its Board of Public Works, could afford to sell its 5,500 shares of stock for \$2,500,000. This has been done.

President Cassatt has again assured Baltimore that a fine union station will be built in that city.

The Committee of Railroads and Canals held recently a protracted meeting in order that a number of railroad representatives could have a hearing upon Delegate Crane's bill providing for a flat rate of 2 cents a mile by all railroads in the State of Maryland.

President Seth has introduced by request a bill fixing the price of all railroad tickets at a rate not to exceed 2 cents a mile, and a freight rate not to exceed 5 cents a ton per mile, except on coal and ores, on which the rate must not exceed 1½ cents a ton per mile.

Alleging that a shipment of strawberries on which they had paid extra freight had been damaged in transit, C. H. Anderson & Co. have brought suit in the Superior Court to recover \$500 from the Northern Central and Pennsylvania Railroad companies, the declaration being filed by Attorney Alfred Bagby, Jr. According to the plaintiff's papers, the berries were shipped on June 13, 1904, consigned to parties in Toronto, Canada, the firm paying the regular rate and one-half over. Instead of being delivered in Toronto on the second morning, as plaintiff declares they should have been, the berries were one day late, and were partly spoiled in consequence of the delay.

MAINE

Maine is a prohibition State. The freight embargo of March 10 and 11 developed a new phase of the liquor situation in Portland, and showed that the

city's supply is largely a from day to day affair. The bulk of liquors consumed in Portland comes from Boston in cases and jugs. Owing to the storm, the boats from Boston did not run on Saturday, March 10, and the unexpected drought created the biggest demand for Jamaica ginger ever known in Portland.

The Marine Freighters' Company has been organized at Bucksport Centre, capital \$10,000, for the purpose of carrying passengers and freight on the high seas.

The freight sheds at Bangor are still crowded with freight awaiting shipment to England, Scotland and Germany.

MICHIGAN

The domestic freight traffic of the Detroit River covering the season of lake navigation in 1905 shows a total of 53,639,086 net tons of domestic freight traffic, of which 39,991,085 tons went south and the remainder north. The foreign traffic through the canals of Sault Ste. Marie, Michigan and Ontario in the same period aggregated 44,270,680 net tons, of which 36,778,738 tons were south-bound.

Grand Trunk is surveying the site for its new railroad shops at Battle Creek.

Grand Rapids & Lake Michigan Transportation Company has asked permission to build a warehouse and docks at Grand Rapids.

MINNESOTA

Though St. Paul has not stated to what extent the proposed cut of 12 to 15 per cent. in merchandise rates from the seaboard to the Missouri River will be applied from Chicago, it is understood that the same percentage of reduction will apply. The first class rate of \$1.47 from the seaboard will become \$1.27, the entire difference of 20 cents being absorbed by St. Paul and other Western roads, the Eastern proportions not being disturbed.

The Great Western has begun work in its new car shops at St. Paul, which have a capacity of 15 new freight cars a day.

MISSISSIPPI

Quick work was done in replacing the freight depot at Meridian, which was destroyed in the tornado of March 2. The debris was removed on Saturday, and on the following Monday afternoon a frame building had been erected to take its place.

Owing to a fight between property owners of Pontotoc and the Mobile, Jackson & Kansas City Railroad, the town is isolated by rail from the world.

An impression prevails that the Goulds are behind the Birmingham & Mississippi Southern Railway, which has applied for a charter.

MISSOURI

Kansas City has taken the 25 per cent. cut on freight rates between the Atlantic Seaboard and Missouri River points by the Chicago, Milwaukee & St. Paul Railroad very kindly.

At a recent meeting of the Carload Egg Shippers' Association, held in Kansas City, it was stated that the body represented the shippers of 3,500 carloads of eggs a year. There are 400 cases, or 12,000 dozen eggs, to a car. John Stewart, of Concordia, Kan., was elected president.

The Wabash will still further extend its terminal facilities in St. Louis, property having been bought on the west side of the city for \$1,015,000 for that purpose. Freight houses will be built on

the site, comprising a block 900 feet long and 250 feet wide.

NEBRASKA

Northwestern has announced a new rate on grain from Iowa points to Omaha. Heretofore no rate was given to Iowa points, and shippers from these stations were compelled to ship to Omaha and then pay 18 cents to the Gulf.

NEW JERSEY

The division freight office of the D., L. & W. has been moved from Easton to Newark, but an auxiliary branch will be maintained at Easton.

The Pennsylvania Railroad engine 3004, recently introduced on the New York Division, has excited much interest among engineers. She is supplied with the Walschaert valve gear attachment, which differs from the gearing used on the ordinary type of the American locomotive, inasmuch as it is on the outside of the drivers instead of the inside. She has been facetiously christened "The Grasshopper."

The question of permitting trolley roads to carry freight is still being vigorously discussed at Trenton and throughout the State.

The Pennsylvania Railroad has notified all other railroads that after July 1 next it will refuse to receive cars from roads which are not up to the specifications required by the company in the building of its own rolling stock.

No feature of the plan for grade crossing abolishment submitted by the Erie, Lehigh Valley and Pennsylvania railroads conserve the interests of Newark, according to the Newark Board of Works.

The Reading's New York short line will be ready for traffic in April.

Early in March over the middle division of the Pennsylvania Railroad there passed 154 freight trains, 89 westbound and 75 eastbound, hauling a total of 8,132 cars, within twenty-four hours.

NORTH CAROLINA

The Southern Railway's business in the State probably exceeds anything ever done before by this road.

The North Carolina Pine Association, at its convention in Norfolk, Va., decided to establish a freight claim department with an expert claim adjuster at its head.

It is reported that the Seaboard Air Line is making ready to expend large sums of money in and about Charlotte in building repair shops and improving facilities.

NEW YORK

The New York Central is to build a track from Barnard's Crossing, on the Rochester & Ontario Beach branch, to the plant of the Eastman Kodak Company.

Lumber dealers along the Rome, Watertown & Ogdensburg Division of the New York Central are protesting against the new freight rates on lumber which go into effect May 1. Lumber will be carried at so many cents per thousand pounds, and the lumbermen say that the increase will amount to 50 cents per thousand feet.

Edward M. Shepard appeared for the Long Island Railroad before the Assembly Committee to protest against lowering fares on that railroad.

The Boston & Maine has acquired a tract of land at Troy for the purpose of building what is commonly known as a "hump," yard, thereby enabling one shifting engine to do the work of several simply by pushing the cars over the "hump," when they will run down the slight incline on the tracks where trains are to be made up.

The new freight line which the Erie is building east of Port Jervis to cut the Oxford grade involves some tremendous engineering. The line leaves the present main line at Guymard and sweeps to the east and south in a bow about the third of a circle around the lower Shawangunk and Schunemunk mountains, rejoining the main line at Arden. The new road is to be 42 miles long.

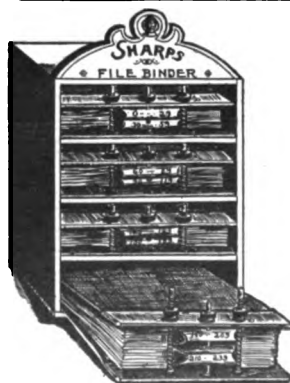
The New York Central and the Lackawanna railroads have had some difficulty this winter in obtaining ice.

An investigation intended to show that certain shippers in New York have been able to get favorable rates from railways by false descriptions of goods has been started by the Interstate Commerce Commission. This board has been informed that much freight has been carried from New York at rates below the published tariff through a resort to the device of falsely billing articles as of a class lower than that in which they belonged.

John P. Bowman, as referee in the action brought by John B. Frey, as receiver of the Rogerson Fruit and Cold Storage Company, of Le Roy, N. Y., against the New York Central Railroad Company, has filed a decision sustaining all of the contentions of the plaintiff and giving a verdict of \$4,997.93.

In one day recently the New York Central handled 653 freight trains containing a total of 31,480 cars.

A Cohoes ice dealer says that if the people of his section suffer for the want of ice this summer the railroad officials will be in a large degree responsible, because they advanced the rates to a point where the Schenectady, Albany and Troy dealers could not afford to cut ice on Saratoga Lake. One Schenectady dealer, it is reported, is paying 17 cents a ton for shipping ice from Waynesburg—double the rates usually charged for the service.



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With the opening of navigation on the Hudson, a new schedule of freight rates will be put into effect on river freight as well as on the railroads. While the rates by boats are less than by rail, they are fixed upon the same basis by the Trunk Line Association. Some rates are increased, others are lowered. Carload lots remain practically unchanged. Troy business men have called for a special meeting of Chamber of Congress to take action in the matter.

The Brooks Locomotive Works is turning out twenty-five freight locomotives for the Lake Shore.

The following is a copy of a headless and tailless circular sent to Buffalo's traveling freight men:

"The incidental expenses of our traveling freight agents have been increasing to such an extent that hereafter they must be itemized. You will in future be governed as follows:

"1. In inviting prospective shippers to drink, be satisfied that there is a fair chance of getting their business.

"2. Do not buy any prospective shipper more than one drink until you are satisfied that it will result in some business for the road.

"3. In buying 'Bud' you will carefully remove the label from the bottle and note on back of same the party for whom purchased and what he promised you.

"4. The labels must be sent in with your expense accounts and you will be allowed credit at the rate of 15 cents per label.

"5. If shippers insist on taking a cigar, you will buy same, but never pay more than 10 cents each.

"6. You will insist on said shipper biting off the end of cigar you buy and handing same to you. You will deposit same in an envelope furnished for the purpose, and you will be allowed credit at the rate of 10 cents each."

INDIAN TERRITORY

The St. Louis & San Francisco will make Vinita a division point for all freight trains as soon as the large freight station can be completed at that point.

OHIO

A list of shippers whose weights are accepted by railroads was recently printed in Cincinnati, with the intention of conveying the idea that they were favored by the railroads. Nearly every one denied that it was permitted to underbill its shipments.

OREGON

A large percentage of the 5,400 new freight cars for delivery to the Harri-man roads in 1906 are expected to go to Oregon.

The O., R. & M. announces revised tariffs on green and cured hides from Boise, Idaho, and common territory. Several important reductions are made.

PENNSYLVANIA

The B. & O. plans a new freight terminal in Philadelphia and will expend \$750,000 for improvements.

The Lackawanna announces that it will spend \$2,000,000 in yards and freight houses at Scranton.

Unless the Wabash can rebuild the West Side belt line, 20 miles in length, within three months, it stands a chance of losing the Carnegie contract for carrying fifty cars of steel a day away from the Carnegie plant.

The Pennsylvania Railroad Company is preparing plans for improvements at the freight yards in East Camden that will cost \$1,000,000.

Joseph Ramsey, formerly president of the Wabash, has announced that he has organized the Lorain Southern Railroad, has purchased the Industrial Railroad of Lorain, and will construct a line from Lorain, on Lake Erie, to the Hocking Valley and other coal fields along the Ohio River.

The Pennsylvania Railroad has announced, through President Cassatt, that it intends to build an entirely separate double track railroad, paralleling the present line from Pittsburg to Philadelphia and New York. The idea is to separate the passenger and freight traffic, and it is expected that the cost will be nearly \$100,000,000.

Employees of the Pennsylvania road at Altoona have been ordered to gather together all the 30, 40 and 50 thousand pound capacity freight cars and destroy them, in order to get them out of the service. All the 60,000 pound capacity cars have been ordered to the shops for equipment with air brakes.

It is officially announced that the refusal of the Pennsylvania Railroad Company to abolish the practice of collecting a \$10 rebate on each \$20 mileage book issued will be followed by injunction proceedings restraining the company from collecting this rebate. The proceedings will be instituted in the Dauphin County Court by Attorney General Carson. Suit would have been brought before this if the railroad company had not asked time to file a brief sustaining the legal right of the company to collect this rebate. Argument in the case of the Pittsburg Plate Glass Company against the Illinois Central Railroad, involving the charge of unfair discrimination, has been begun before Judson C. Clements, of Washington, representing the Interstate Commerce Commission. The allegation of the Pittsburg Plate Glass Company is that while importers are able to deliver plate glass in Chicago from Antwerp, Belgium, for 32 cents a hundred pounds by the way of New Orleans, the Illinois Central Railroad charges them 60 cents a hundred pounds from Chicago to New Orleans. A rate of only 38 cents is charged to Minneapolis, it is alleged, while the plate glass company is compelled to pay 40 cents a hundred pounds. From Pittsburg to Minneapolis the rate over the Illinois Central is 60 cents a hundred pounds.

RHODE ISLAND

The Enterprise Transportation Company is erecting a wharf in Jamestown, and has offered to carry fish from Newport to Fulton Market in New York for 52 cents a barrel.

The Providence, Fall River & Newport Steamboat Company and the Dyer Transportation Company have formed an agreement by which the former handles the passengers and the latter the freight

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business in the waters of Narragansett Bay.

Prof. William Macdonald, of Brown University, declared in an address at Providence that a remarkable drift in the direction of socialism had marked the last year, and that it was "the blackest year in the social and political history of the United States."

SOUTH CAROLINA

Complaints of freight congestion continue to come from Columbia, and the City Counsel of Charleston has taken up the delay of the Atlantic Coast Line in handling freight over the Charleston Terminal Company.

TENNESSEE

A scarcity of cars in the Coal Creek district has caused a large number of miners to seek employment elsewhere and is materially affecting the manufacturing interests of Knoxville.

The Illinois Central will build a brick and steel freight house at Clarksville.

The railroads will extend to Chattanooga shippers Nashville rates from St. Louis to Western points.

The L. & N. is putting in a series of long sidings between Nashville and Birmingham. The road is short of motive power and congestion exists about Birmingham.

The Memphis Freight Bureau has gained its plea from the Chicago, Rock Island & Pacific Railroad for allowances for elevator service in the grain trade. The announcement to this effect was made by J. S. Davant.

Co-operation of merchants, manufacturers and all classes of shippers with the railroads at Nashville has been tried for a year and has proven of great benefit to the city.

The Mobile, Jackson & Kansas City Railroad from Mobile to Middleton is now in operation for freight.

TEXAS

The courts have declared the law taxing railroads 2 per cent. of gross receipts unconstitutional.

The Katy will use the tracks of the International & Great Northern between San Marquis and Austin.

Kansas City, Mexico & Orient Railway Company has asked for authority to issue bonds on the proposed mileage in Texas. This is considered a decisive step in the determination to build across the State of Texas in completing the line from the port of Topolobampo, Mex., on the Pacific Coast, to Kansas City, Mo.

The Katy, it is reported, will build from Oklahoma City to Denver.

The first train over the Brownsville road, into Galveston, was run on March 14.

James A. Thompson, a lumber merchant of Taylor, has filed suit in the Twenty-sixth District Court, at Austin, against the Missouri, Kansas & Texas Railway Company for damages and penalties in the sum of \$22,500, on account of alleged unjust discriminations against plaintiff and violations of Articles 4,574 and 4,575 of the Revised Statutes of Texas, in which unjust discrimination by railroads is defined.

Chairman L. J. Storey says, of the new lumber tariff recently promulgated by the Railroad Commission: "The reduction is by no means as great as was desired by more than 200 petitioners, composing a class of our fellow citizens whom we are persuaded desire only justice and the rendition of a verdict and judgment in strict accordance with

the law and the facts of the case, after a careful investigation and due consideration of every question necessary to be considered by the commission."

Commissioner Colquit says: "The rates now prevailing under tariff adjustment No. 34 (lumber tariff) is one of the strongest arguments that the worst enemy of the Railroad Commission can want upon which to base a plea for its abolition, and I am not satisfied that the new lumber tariff is much of an improvement. Further, I am disgusted with the whole rate making practices of the Railroad Commission and believe that the time is not far distant when the people will have to look to some other source for the control of the situation." The Gulf, Colorado & Santa Fé Railway Company is to inaugurate court proceedings testing the validity of the rates on lumber applying from points on that line through Port Arthur and Sabine Pass. The Santa Fé now claims that inasmuch as the rates are on lumber for export they are interstate rates, over which the commission has no jurisdiction, and will plead same in court in proceedings to have the rates canceled. It is said that suit with that purpose in view will be filed within the next few days.

VIRGINIA

Norfolk merchants will establish a parcel express by freight from New York to Norfolk, in opposition to the Adams Express Company.

The Richmond Leader says that every railroad, factory, mill, and other business in which fuel is used, is storing coal as fast as possible.

The Suffolk & Carolina Railway has changed the name on its freight cars to the Virginia & Carolina Coast Railway. The change caused some comment in Norfolk.

The Seaboard will rebuild its freight depot at Portsmouth at the earliest possible moment.

WASHINGTON

Lumber manufacturers at Aberdeen complain that they are not getting a fair proportion of available cars for shipment of lumber.

There is a heavy flow of freight from Seattle to the North. The Seward & Kenai peninsular shipments are as large as the steamship companies can handle.

The Oregon Railroad & Navigation Company has made another cut in freight rates between Spokane and points in Idaho. The changes include grain, flaxseed, flour and mill feed in less than carload lots, from 28 to 24 cents; potatoes, less than carload lots, from 28 to 26 cents; onions, in carload lots, from 17 to 15½ cents; hay, less than carload lots, from 32 to 26 cents.

The Hammond Milling Company has made its first shipment of flour to China on an order secured since the initiation of the Chinese boycott on American goods.

Ten thousand tons of freight will be shipped from Seattle to Alaskan military posts by the Government this spring. Last year less than 7,000 tons were sent.

WEST VIRGINIA

The independent coal operators of this State, Pennsylvania and Ohio met at Clarksburg in an effort to obtain from the railroad companies a fair deal in the way of service. They claim they have been damaged because the railroads have not placed sidings for them.

SITUATION WANTED

For a number of years I have had charge of the freight and claim department of a very large shipper, acquitting myself to the great satisfaction of my employers, at the same time maintaining pleasant relations with the representatives of the various railroads. Am thirty-five years of age, and can give best references as to honesty, ability and industry. Wishing to make a change, I offer my services to those having an opening where they can be utilized.

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WISCONSIN

The largest freight car in the world is being constructed in the St. Paul shops, Milwaukee. The largest freight cars in use at present are of 100,000 pounds capacity, and they are looked upon as monsters. The new car will have a capacity of 200,000 pounds. It is being built to transport a ninety-ton section of a base for a blast engine which the Allis-Chalmers Company is shipping to Bethlehem, Pa. The car is 41 feet long, has four instead of two trucks, and sixteen instead of eight wheels.

At a convention of cheese makers at Darlington a committee was appointed to meet representatives of railroads to secure some changes in rates. Under existing conditions New York shippers can get goods to Chicago at a cheaper rate than the Wisconsin men. It also appears that in Wisconsin cheese is classified as second class, and in Illinois as third class.

So great is the freight congestion between Milwaukee and Chicago that Milwaukee merchants are shipping goods to Chicago by boat in order to avoid the delay that attends shipment by rail.

The Milwaukee Feed Shippers' Association has been organized for the purpose of obtaining uniform terms of shipments and uniform laws. Charles R. Lull was elected president.

Local agents of the Chicago & North Western; Chicago, Milwaukee & St. Paul, and the Wisconsin Central Railroads met recently at Neenah to effect an agreement covering the collection of freight rates. It has been the custom for all roads to make weekly, and in some cases semi-monthly, collections of the charges of the incoming freight. The agreement entered into stipulates that all charges must be paid within twenty-four hours after the shipment of freight, otherwise the goods will be held until such settlement is made.

CANADA

Manufacturers and exporters in Eastern Canada are pleased that the duty on inland freight has been removed by the Australian Government.

Deputy Minister Butler, of the Department of Railroads, in his annual report, says that on June 30 last there were 20,601 miles of completed railways in the Dominion, an increase of 990 miles over the previous year, besides 3,632 miles of siding. The paid up capital amounted to \$1,248,666,414.

The Montreal Herald says: "There is no question to which the Dominion Railway Commission has given more patient attention than the exceedingly difficult and complicated subject of rules governing the service of cars used by shippers on the railways. The new rules that have just come into operation prescribe the conditions upon which the cars that are owned by the railways shall be used by the shippers and those owned by shippers can be used by the railways. It is believed that all interests, including that of the public, are protected."

The International Portland Cement Company has shipped part of its big order of 30,000 barrels for Western trade.

There is lively competition among the transcontinental lines for the China silk traffic, and the Canadian Pacific recently sent a train containing a valuable consignment of silk across the continent at great speed, using one of its new express engines.

The C. P. R. has submitted to shippers here a contract releasing the company from all liability for damages to goods in transit, and members of the Board of Trade have decided to refuse to sign it, and will endeavor to influence all other shippers to do likewise. They have also sent a copy of the document to the Railway Commissioners, with a protest, and request the commission to restrain the railway company from demanding that such a contract be signed by shippers in general.

The Railway Commission recently heard evidence re the complaints of the boards of trade of British Columbia and by the C. M. A., against alleged freight rate discrimination with the Pacific Coast cities.

Hon. Joseph Martin appeared for the Complainants and Hon. A. G. Blair for the C. P. R. The latter argued that the commission had not the power to deal with a question of discrimination excepting in cases where goods were carried in the same direction over the same line.

An answer to complaint made by the Canadian Manufacturers' Association that the C. P. R. unjustly discriminated against Canadian shippers has been sent to J. Marlow, manager of the transportation department of the association, by G. M. Bosworth, fourth vice president of the company.

Mr. Bosworth states that the railway does not deny the complaint of the manufacturers that higher rates are charged Canadian shippers than British and United States firms, but argues that it is in the interest of the Canadian railways as well as the shippers that traffic handled by Canadian railroads should be as large as possible. "If Canadian railways," he says "can secure from the United States sufficient volume of traffic to complete their through trains and thus enable Canadian railways to give lower rates and better service to the Canadian traffic, they should do so."

PANAMA

Chief Engineer Stevens says that the freight situation on the Isthmus is now satisfactory, and on the date of his cablegram there were on hand only 7,700 tons of freight for all directions and to and from the Atlantic and Pacific.

PERSONAL MENTION

CLEVINGER.—H. C. Clevinger has been appointed division freight agent of the Buffalo & Allegheny Valley Division of the Pennsylvania Railroad, with headquarters at Pittsburg.

FAY.—Charles S. Fay has been appointed Southern freight agent of the New York-New Orleans line of the Southern Pacific, with headquarters at New Orleans.

MYERS.—J. Taylor Myers has been made freight claim agent of the Western Maryland Railroad.

PROCTOR.—John A. Proctor has been promoted to the position of traveling freight agent for the Rutland Railroad, with headquarters at Rutland, Vt.

RIGG.—C. E. Rigg has accepted the position of traffic manager of the Chattanooga Packing Company.

SPENCE.—L. J. Spence is now general freight agent of the Southern Pacific lines operating between New York and Galveston.

WESCOTT.—R. C. Wescott has been appointed assistant superintendent of the Frisco, Birmingham Division.

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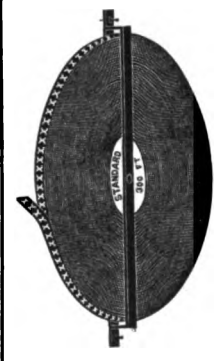
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HEARINGS AND RULINGS BY STATE COMMISSIONS

ALABAMA

The Railroad Commission, President Commer dissenting, has refused to change the freight rates on cotton to Alabama mills. The commission also ordered the Louisville & Nashville to put its station, at Mobile, in a sanitary and cleanly condition. The commission further refused to approve a new tariff of the Atlanta & Birmingham division of the Seaboard Air Line, because it was 8 per cent. higher than the rates on the East and West, the road inherited by the Seaboard.

COLORADO

The Trans-Missouri Traffic Association has reduced the rate on cotton piece goods from Missouri River points to Colorado common points from \$1.25 to 80 cents per 100 pounds, over the Burlington, Union Pacific, Missouri Pacific and Rock Island. George J. Kindel has recently been in conference with United States District Attorney Earl M. Crans-ton, relative to a method of getting at the Eastern railroad companies which have failed to comply with the recent ruling of the Interstate Commerce Commission, which ordered that the rate on cotton piece goods from New York to Denver shall not be higher than \$1.50 per 100 pounds.

KANSAS

Carr Taylor, attorney to the State Board of Railroad Commissioners, contemplates bringing another coal rate case for the benefit of the salt manufacturers at Hutchinson and a few other towns in the Kansas salt belt. A reduction in the rate on slack coal from Pittsburg to the salt manufacturing towns will be sought.

Kansas roads have combined to resist the last order of the Railroad Commission of that State directing a reduction of 5 per cent. in grain rates from all points to Atchison and Kansas City, a reduction of 1 mill per ton mile in rates on lump coal, and considerable reductions in carload rates on other commodities.

The Atchison, Topeka & Sante Fé has decided not to ignore the refined oil freight rate fixed by the State Legislature, although the company holds the rate to be confiscatory. The railroad will appeal to the next Legislature for a release.

KENTUCKY

The State Board of Railroad Commissioners has given several hearings on the general charge of excessive freight rates in Kentucky. The hearings will be continued for several weeks.

Hollis H. Price, formerly a member of the firm of Barton-Price Company, commission dealers in hay and grain, with headquarters in Louisville, pleaded guilty to two counts in a Federal indictment and was fined \$1,025 by Judge Walter Evans, of the United States Court. Price was indicted with Charles H. Wells last October by the Federal Grand Jury on numerous counts of violating the Interstate Commerce law. The two counts to which Price pleaded guilty, with the permission of the Assistant United States District Attorney, were that of conspiring to defraud the railroads by underbilling freight and that of falsifying weights. The two counts were consolidated by order of the court and the one fine of \$1,025 was in satisfaction of all demands of the Government.

LOUISIANA

The Railroad Commission of Louisiana has issued its order No. 504 to the Vicksburg, Shreveport & Pacific Railway to the effect that as the depot of that road at Calhoun was destroyed several months ago and no steps have been taken by the road to replace it, it is ordered that the road will proceed at once to rebuild a standard freight and passenger depot at that place, with all necessary appurtenances, and place an agent in charge of same within thirty days.

The Commission is in receipt of a complaint on the part of the citizens of Litroe, Marion, Cecil and DeLoutier, on the Farmerville Southern Railway, asking for a reduction in the rate on oak staves on that road. The petitioners set forth that in the case of staves the shipper pays for the loading, the receiver for the unloading. In shipments of cotton the railroad pays for both. The rate on cotton is 5 per cent. of the value of the shipment, the rate on staves is 25 per cent. of the value of the shipment.

MASSACHUSETTS

The Railroad Commission has issued an order giving permission to the Old Colony Street Railway Company to carry on a baggage, freight and express business between Brockton, Taunton and the other towns on its line to Providence. This is the first of the similar petitions presented by the company.

MINNESOTA

The Railroad and Warehouse Commission has ordered Minnesota railroads to put shipments of macaroni, spaghetti and vermicelli products in the same class with breakfast foods as to freight rates.

MISSISSIPPI

The Senate Committee on Federal Relations held a session recently for the purpose of giving hearing to the pilotage controversy from the Gulf Coast.

Hon. Ruchs Yerger, representing the Gulfport Business League, appeared before the committee to advocate the enactment of laws that will reduce the fees charged by pilots for bringing vessels in and out of the Gulf Coast harbors. It is contended by Gulfport citizens that the pilots at that place, ten or twelve in number, have a close corporation, and that the fees charged for services are excessive, amounting to an average of \$100 for each vessel entering or clearing from a coast harbor during the year; that the fees charged cause many vessels to load and unload at Ship Island that would otherwise enter the coast harbors.

The pilots' association was represented before the committee by Mr. Bowen, of Gulfport, who opposed any change in existing statutes.

Mr. McLaurin, of the Twentieth, wants to bring the Yazoo & Mississippi Valley road under the direct supervision of the Railroad Commission on freight rates, and to this end he has introduced a bill in the Senate seeking to repeal Section 6 of an act of the Legislature of 1882, which apparently carries an exemption.

MISSOURI

The Missouri Railroad Commissioners dealt a blow to the Standard Oil monopoly when it reduced the rate on oil shipped from St. Louis to Kansas City or vice versa to 9 cents a hundred pounds.

The existing rate is 20 cents from St.

THOS. C. MOORE

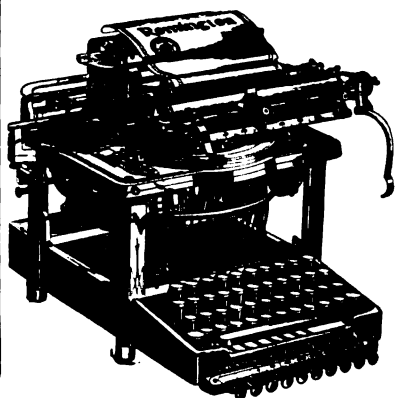
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During the hearing of charges of discrimination on railroad rates on oil filed by the Kansas Oil Producers' Association, E. L. Wilthoyt, formerly a Standard Oil agent at Topeka, appeared before the Interstate Commerce Commission and said:

"The Standard Oil Company, when I was with them, was charged \$5 a car by the Terminal Company in St. Louis for transporting a car from East St. Louis, Ill., to St. Louis. To save this the Standard laid a pipe line under the river, and every car of oil bound westward was pumped out in East St. Louis and pumped into another car in St. Louis. This \$5 a car was that much off the ability of the independent dealer to live in competition with the Standard."

Mr. Wilthoyt said that while agent for the Standard at Topeka he was instructed to watch all shipments of oil to that point, ascertain the name of the shipper, and the point of distribution.

"How would you get information from the railroads as to your competitors' shipments?" was asked.

"I never went to the railroad officers," he said. "I always got my information from employees of the railroad. I was allowed \$8 a month to spend with railroad employees, buying drinks and making myself a good fellow, and I was permitted to give away oil and gasoline to railroad employees and report such gifts as 'donations.' The \$8 a month was sent me in a personal check by E. P. Pratt, manager for the Standard in Kansas City, and later by J. W. Mayer, who succeeded him as manager."

TENNESSEE

A number of railroad officials appeared before the State Railroad Commission recently to contend against circulars 312 and 319, which provide for the reweighing of empty cars and the storage rules. The morning session was taken up with arguments.

Under a circular issued November 1, 1905, it was ordered by the Railroad Commission that all roads re-weigh empty cars and stencil the correct weight upon the sides of the cars, together with the date upon which the cars were weighed.

It was contended by a number of the railroad officials that they did not have the authority to reweigh cars of other companies, and that the cars of a foreign railroad corporation could not be reweighed. It was also contended that it would require a considerable time for the railroads to reweigh all cars.

The following storage rule amendment is also objected to by the officials of the roads:

"Storage Rule No. 10, published in Circular No. 311, is hereby amended by adding thereto the following:

"The basis for any claim filed for a noncompliance with this rule shall be, in cases where the shipper specifies the routing, the actual route over which the shipment moved; and in cases where no routing is specified by the shipper, the shortest mileage route shall be used."

The Railroad Commission has been requested, by a lumber manufacturing firm at Brookhaven, for a ruling on what constitutes a minimum weight for carload shipments, stating that some roads place it at 24,000 pounds, while other lines place the minimum at 30,000 pounds. The Commission replies that the minimum for lumber shipments in carload lots is 24,000 pounds.

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## TEXAS

Rates on salt are to be adjusted according to the notice of hearing; likewise a readjustment of rates on soap and soap powder. In the latter the maximum rate of 33 cents is undisturbed, but lower rates are prescribed for short hauls.

The proposition to put in a 3 cent differential on cotton from Gulf, Beaumont and Great Northern and Gulf, Beaumont and Kansas City points north of Beaumont to Sabine Pass and Port Arthur, with a proviso that it move from Houston on the balance of the through rate, is ordered.

The proposition as to rice rates is dismissed, and a suitable house is ordered for the town of Harbin, to be used as a depot.

The proposition to put in a rate on oyster shells, ground or crushed, in less than carloads, is ordered as set out in the notice of hearing.

The Commission will grant a hearing to complaining shippers who assert that abuses of freight rates on grain and products exist in Texas.

It is alleged that certain mills had been billing corn chops as corn, thereby getting a rate on chops which they were unable to meet.

The Commission accordingly notified the railroads that they should be in a position to stop such underbilling, and warning them they would be held responsible for any discrimination.

Advice of railroad counsel was given the roads to the effect that if such practices were proven, those guilty could be tried on criminal charges, and it has been decided to endeavor to obtain such evidence and make an example of somebody.

F. O. Becker, manager of the Western Railway and Inspection Bureau, will put on more inspectors at the expense of the railways, whose duty it shall be to ferret out any such abuses of the rates and report for future action.

Statements made by freight men are to the effect that there is no denying that the rates are abused in certain cases. It is stated that not only are goods taking a higher rate billed as goods taking a lower one, but that the cars billed as containing minimum shipments are frequently loaded to the top, far in excess of it, while the bills of lading call only for the minimum.

## WASHINGTON

The Railroad Commission intends to establish practically an entirely new schedule of freight rates. This decision is a reversal of the plan heretofore followed by the Commission of taking up freight schedules piecemeal for adjustment.

## WISCONSIN

The first decision handed down by the Wisconsin Freight Rate Commission is a signal victory for Plumb & Nelson, wholesale grocers, at Manitowoc, and other shippers. The decision against the Wisconsin Central and Milwaukee roads benefits local shippers to Hilbert, Kiel, Chilton, Plymouth, and other points. Plumb & Nelson contended that freight rates were higher than the rates to these points from Milwaukee, and after a failure to secure redress took the matter before the Commission. The ruling established a new basis for local freight rates out of here on the Central to Hilbert Junction, and thence south on the Milwaukee.

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## Senatorial Debate on the Hepburn Bill

DEBATE on the Hepburn Bill continues in the Senate, and several notable speeches on the subject have been made during the month. No date has yet been set for closing the discussion, and, after it is finished, some time will be consumed in disposing of the sixty odd amendments which have been offered. Following are excerpts from the principal addresses had appeared in *The Congressional Record* up to the time of the preparation of this article:

Mr. Teller, of Colorado, said:

I think perhaps the public is somewhat impatient, but we ourselves sometimes get impatient about things. There came in here today a joint resolution to remedy an evil that many of us have seen to exist for a long time, and that is the distribution of public documents. The distribution of public documents today is as it was thirty years ago—it is almost thirty years since my first connection with this body—except for some slight amendments that have been made; and yet we heard a demand for immediate action. Mr. President, there is no hurry about it. We will have the remainder of the session to dispose of that matter, and we will have the remainder of the session to dispose of this bill. I want to say that it is certain the Senate will not finally adjourn until the rate bill is disposed of, not only by the Senate, but by both Houses; and it will in some way have, I am sure, the approval of the President before the Senate adjourns.

\* \* \*

That clamor and exaggeration and condemnation and all that are going on I know. You can not pick up a magazine any more without seeing the Senate arraigned and sometimes abused because we have not hastened the passage of this bill, and because at the last session we did not take up the House bill and pass it. I said then that we could not do justice to the railroads and pass it then; we could not do justice to the shippers and pass it then; we could not do justice to the producer and consumer, who are to be considered, because every industry in this country depends upon the way in which we shall settle the proposition involved in the pending bill. You may affect the manufacturers, you may affect the miners, you may affect the farmers injuriously if you are unwise in your determination as to what this bill shall contain. A great question like that is too big for us to haggle over amendments of a minor character and of little consequence. Let us address ourselves to the main proposition: How shall we, in case a railroad refuses or neglects or is unable to make a proper rate, determine what is a proper rate and one that will do no injustice to the railroad or to anyone else.

Mr. Overman, of North Carolina, said:

I am in favor of allowing these corporations to have their day in court just the same as an individual; I am in favor of giving them the same rights that the individual has. This amendment which I have proposed is constitutional. The court has so decided it, and from all the cases I have cited here, after we decide what "judicial power" means, in the language of Judge Marshall, if we are satisfied on that point there is nothing clearer to my mind than that we can limit the entire jurisdiction of the court as to the equity practice,

and we certainly can limit it as to the time when the notice shall be given and the complaint filed.

\* \* \*

I confess, Mr. President, I do not like some of the verbiage of the bill. I do not like the words "fairly remunerative," and these words added to the words "just and reasonable." The language of the bill is, "shall prescribe what will be a just, reasonable and fairly remunerative rate or rates." Why use so many adjectives to describe the rates to be fixed? Why not use the plain words of the Constitution, "just compensation?" \* To say that it would be fairly remunerative would, in my judgment, involve the question unnecessarily. What would be a fairly remunerative rate for the amount invested coupled with the direction to fix a just and reasonable rate, according to the rule laid down in the Nebraska case, would present a very troublesome question to the Commission. The man from Texas, where the legal rate of interest is 10 per cent.; from South Carolina, where it is 8 per cent.; from North Carolina, where it is 6 per cent., and in some other States, where it is 4 per cent., all would have a very different idea as to what constitutes a fair and remunerative rate. What is just compensation for services performed is easily understood and easily arrived at, or to use the words "just and reasonable," would be equally satisfactory.

Mr. Spooner, of Wisconsin, said:

Mr. President, I am not able to agree with the Senator from Texas and others as to the power of Congress to so legislate. I have little doubt that if the bill when enacted shall contain such a prohibition it would be unconstitutional in that respect, and fear it will be regarded as so intertwined with the part of the bill authorizing the fixing of rates as to endanger it.

Many of us think the pending measure is in more than one respect of doubtful constitutionality, to say the least of it. I think I may justly say that many of us regard it as unconstitutional in one or two important particulars.

\* \* \*

Mr. President, the framers of the Constitution manifestly did not intend to create a judicial department that was to be dependent in the exercise of *judicial power* upon the will of Congress. They had painful memories of the history of jurisprudence in England. They knew that the bar of England and the fearless judges of England had done more for personal liberty than all the other forces of England could do. They knew, too, that judges of England, holding office by favor simply of the King, and therefore dependent upon his will, had perpetrated wrongs and tyrannies indescribable; for there is no tyranny any worse than the tyranny of a lawless judge.

They knew, too, that out of the confusion of legislative and judicial functions in the English system had arisen intolerable abuses. They intended by the Constitution to create, and did create, three co-ordinate and independent branches of the Government, to each of which was assigned its proper function, clothed with the power essential to their proper discharge. They intended that each should be in its sphere absolutely free from invasion by the others. They created the legislative department to enact rules of action, the executive department to administer the laws, the judicial department (the weakest of all in a way) to hold each of the others, the legislative and the executive, strictly to the limitations of the Constitution. Each was to be permanent as the Government itself until changed by the people.

\* \* \*

My proposition is: That when the Congress confers *jurisdiction* upon the inferior courts of the United States over any one of the cases or controversies enumerated by the Constitution the judicial power, *ex necessitate rei*, goes with it, including the instrumentalities which inhere in the jurisdiction and are necessary to its efficient exercise.

\* \* \*

Is the judiciary an independent department of the Government, which the Constitution intended it to be? If the power exists in any degree to interfere with the exercise of judicial power, except by regulating procedure and practice, it is for Congress alone to say how far that power shall be exercised. It is inconceivable that a judiciary, whose function under the Constitution it is to see to it, among other things, that the executive department and the legislative department keep within the limitations of the Constitution, overturn laws when, in their judgment, they are violative of the fundamental charter, can be, to the extent involved in the amendment here, subject to Congressional control.

\* \* \*

The argument that has been made here and splendidly made, which I am attempting to controvert, was not upon the question whether Congress can regulate the practice of issuing injunctions so as to require notice; not at all. The judiciary act did that. It was provided in the judiciary act that no injunction should be issued by a Federal court without reasonable notice. It was provided in 1872 that no injunction should be issued by a Federal judge without notice. But the Federal judge was authorized, where, in his judgment, it was necessary to do justice, at the time of issuing the order to show cause, to grant a restraining order. Nobody disputes that. But it is a far, far cry from that to the proposition that the Congress can prohibit a court of equity, clothed by its legislation with jurisdiction and with the judicial power of the Constitution in equity, from granting a preliminary injunction even with notice.

\* \* \*

My proposition is, Mr. President, that when jurisdiction over any one of the enumerated cases is conferred upon the court, the judicial power of the Constitution goes with it, and that it is not in the power of Congress, while it might have withheld the jurisdiction, to invade at all the judicial function of hearing and determination and the exercise of those powers—incidental, if you please—essential to carrying into effect its decisions.

Given the jurisdiction, Mr. President, over the subject matter, and the parties, how the judicial power shall be exercised can not lawfully be usurped in any degree by the Legislature. Dictation to courts and judges as to the decisions which they shall make, by Legislature or executive, is not to be tolerated. When the chancellor decides that a just exercise of judicial power, which he is sworn to administer, demands a relief which is part of the judicial power, an appellate court, if he errs, may correct him. The Legislature can not reverse his decree or exercise the judicial power for him, in whole or in part. Courts do not sit to execute legislative

judgments or decrees. If it were otherwise, we would not be living under the Government which our fathers created, or in the times in which we live, but would be carried back a century and more, when Parliament passed bills of attainder, bills of pains and penalties, and the like.

\* \* \*

Congress may withhold, or might have withheld, jurisdiction from the Circuit Courts in certain cases. They did it for many years, and we may admit they may now withhold jurisdiction from the Circuit and District Courts; but, Mr. President, so long as they do not deprive the court of jurisdiction, so long as looking into the statute the court can see that it is given jurisdiction of the subject matter, Congress can not be permitted, on principle—a principle which this people never must suffer to be invaded or abrogated—to dictate to the court the manner in which it shall exercise this judicial power. That would be to emasculate the courts of justice; that would be to obliterate the line which the Constitution has drawn between the co-ordinate and independent branches of the Government. Under that theory the judicial department of the Government would cease to be an independent department of the Government, and a blow would be struck at the best work of the fathers.

In cases of concurrent jurisdiction it has always been held that the court whose jurisdiction first attached held it, and it has been repeatedly decided that in such case the Federal court may issue the writ of injunction in order to protect its jurisdiction and to enable it to exercise efficiently the judicial power vested in it by the Constitution.

MR. OVERMAN.—May I interrupt the Senator from Wisconsin?

THE VICE PRESIDENT.—Does the Senator from Wisconsin yield to the Senator from North Carolina?

MR. SPOONER.—Certainly.

MR. OVERMAN.—I desire to say, on another point, that I myself brought that suit to the Supreme Court of the United States.

MR. SPOONER.—I know it, and I was going to refer to that fact.

MR. OVERMAN.—I desire to say that I have seen the abuses and felt the iron hand of a judge who grants an injunction without notice. I have twice been enjoined at midnight—

MR. SPOONER.—That is another thing.

MR. OVERMAN.—And the State court itself was enjoined without any notice. I merely wanted to illustrate it, that is all.

MR. SPOONER.—That is another thing. The Senator from North Carolina, I understand, has introduced an amendment to the pending bill, prohibiting the granting of an injunction without notice in suits brought under the proposed act to injoin the enforcement of the Commission's order. That goes to a regulation of practice. That does not deny in any sense the right of the court to exercise the judicial power which inheres in the jurisdiction. There is a clear distinction between the two things. Congress for many years prohibited the Federal courts from granting an injunction without reasonable notice, as I have said.

MR. OVERMAN.—I understand that that decision held that the United States Court having acquired jurisdiction of the subject matter, although the case had gone off the docket, in order to protect its own decree it had the right to injoin the State court.

MR. SPOONER.—That is the very point. Notwithstanding the prohibition that no injunction shall be issued by a Federal court to stay proceedings in a State court except in bankruptcy cases, it has been repeatedly decided that to effectuate the judicial power of the Federal court, to give force to its decrees, and to protect its jurisdiction in the very nature of the thing the court must exercise this power.

MR. OVERMAN.—And protect the title of those who bought under the decree.



MR. SPOONER.—That is giving effect to their decree; that is all.

Mr. President, without the power to protect its jurisdiction, without the power to exercise the functions essential to the jurisdiction, what would a court be? And to say that jurisdiction admitted, the Congress can hamper the court in the exercise of its judicial power, chop off a piece of it here and a piece of it there, is something which is not to be tolerated under our system of government, in my judgment.

Mr. President, I put against all comers on this question the statement of Mr. Justice Story in the case to which I called attention yesterday—*Martin v. Hunter*, reported in 1 Wheaton—at the end of an elaborate argument on the construction of the judicial clauses of the Constitution:

"But even admitting that the language of the Constitution is not mandatory and that Congress may constitutionally omit to vest the judicial power in courts of the United States, *it can not be denied that when it is vested it may be exercised to the utmost constitutional extent.*"

\* \* \*

If an adequate fund or other security were provided from which the carrier could certainly obtain the "just compensation" guaranteed by the Fifth Amendment when the compensation shall have been judicially ascertained, I grant there probably might with safety be incorporated in the bill a provision prohibiting the court from granting an interlocutory injunction restraining the enforcement of the order pending final decree. No such fund or security could be afforded except by the Government, whose Commission fixes the compensation for the use of the property and in whose court the justness of the compensation is being challenged, and that would be "impossible" from every standpoint but that of financial ability.

What happens if without any fund or security, and pending the ascertainment of the just compensation, the court is prohibited from granting an interlocutory injunction, no matter if the bill and exhibits demonstrate its justice and necessity? The complainant carrier will have been compelled to furnish to the public for months, perhaps, the use of its property for the compensation fixed by the Commission and challenged in court from the beginning as non-compensatory. If the rate shall be held by the court in the end to be not "just compensation," and the enforcement of the order be perpetually enjoined as unlawful, how stands the carrier? The difference between the rate fixed by the Commission and "just compensation" may amount to many millions. It will have compulsorily rendered the service by the use of its property for the public without the "just compensation" to which the Constitution entitles it and of which no valid law can deprive it. So far as it relates to the difference between the rates collected and just compensation, it will have been compelled to furnish the use of its property, through its own servants and at its own cost and risk *upon credit*. Where is its remedy? From "an adequate fund from which the owner of the property can certainly obtain compensation," as in the case of the individual? There is none such. There is no *remedy*. Its only recourse would be to bring as many suits as there were separate shippers, for large sums and small sums, against the solvent and the insolvent, against estates of shippers who meanwhile have died, against parties in different jurisdictions—perhaps in other countries—certainly in different sections of our own country, involving a multiplicity of suits beyond comprehension very barren of result. It would all come to this: That private property would have been *taken for public use without just compensation* paid in hand and *without possibility of redress*, for there would obviously be no redress. Can this be done under the Constitution? Can Congress provide for the compulsory taking of this property, and at the same time by law applicable only to this class of cases prohibit the courts of the United States having *jurisdiction* of the subject matter from exercising the *judicial power* to secure the full

protection which the Fifth Amendment, upon the demand of the States, was adopted to afford? It would not be a regulation of the jurisdiction, but a limitation of the judicial power. It would be substituting for the discretion of the chancellor the judgment of the Legislature. It would be, in effect, making the rate fixed by the Commission *conclusive* pending final decree.

It will not be contended that Congress may lawfully provide that the rate shall be conclusive until final decree setting the order aside, and that the decree shall not relate back to the filing of the bill. In effect this would accomplish substantially the same result.

\* \* \*

The court may, without injustice to shipper or carrier, grant in proper cases, as is done in other cases, interlocutory injunctions *upon terms*. This course will, as nearly as possible, be just to all interests. The terms may be either a bond running to the Interstate Commerce Commission or otherwise, as may be thought wise, and conditioned to repay to shippers, if the order be sustained, the charges collected pending final decree in excess of those fixed by the order of the Commission. Or—and much I prefer this—the excess rates may be required to be paid into court monthly to abide the result of the litigation, for distribution among those entitled if the order is sustained. The payment of the excess is, in my opinion, practicable, and it would have a greater tendency to prevent litigation except upon good ground for it. I have thought much of this phase of the subject, but can not now discuss it. Either plan can be arranged to do approximate justice both to shippers and carriers *without endangering the validity of any portion of the act*.

Mr. Knox, of Pennsylvania, said:

Upon the threshold of this inquiry I think it will be instructive to take a general view of the purposes of the law which created the Interstate Commerce Commission and the powers and duties the Commission now possesses and performs.

In the case of the *Interstate Commerce Commission v. Cincinnati, etc., Rwy. Co.* (167 U. S., 506) the court said:

"The Interstate Commerce Commission is *charged with the duty of seeing* that there is no *discrimination* between individual shippers, and that nothing is done by *rebate or any other device* to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the interstate commerce act, shall be secured to all shippers."

To these ends the Commission now has, *inter alia*, the following powers:

First—*The power to investigate* matters complained of in such a manner and by such means as it shall deem proper.

"*The Commission is to keep itself thoroughly informed* as to all the operations of every common carrier in the United States engaged in interstate commerce; and *whenever* in the course of its *investigations* it discovers abuses which affect the public commercial interests injuriously, its duty is at once to have such abuses suppressed, and, if need be, to call in the strong arm of the Government, through its appointed courts, to enforce the provisions of the law. (*United States v. Missouri Pacific Railway Co.*, 65 F. R., 909.)"

Second—*The power to require* by subpoena the *attendance and testimony* of witnesses from any place in the United States, and the *production* of all *books, papers, tariffs, contracts, agreements and documents* relating to any matter under investigation, and in case of disobedience of the subpoena, to invoke the aid of the United States courts.

This power is conferred in Section 12 of the act as amended (25 Stat., 850), and includes the affirmed constitutionality of the law requiring the participant in a criminal transaction to testify in regard thereto, such enforced testimony having the effect, however, of giving the witness complete immunity.

(Sec. 12 as amended, 26 Stat., 743; and act of Feb. 11, 1893, 27 Stat., 443.)

Third—*The power to inquire into the management of the business of all common carriers subject to the provisions of the interstate commerce act, to keep itself informed as to the manner and method in which the same is being conducted, and to obtain from the carriers full and complete information to enable it, the Commission, to perform its duties.* (Sec. 12 as amended, 25 Stat., 858.)

Fourth—*The power to prescribe the measure of publicity to be given to joint rates, fares and charges, to make public proposed advances or reductions in joint rates, fares and charges, and to determine and prescribe the form of schedules as to rates, etc.; to be kept open for public inspection.* (Sec. 6 as amended, 25 Stat., 856, 857.)

Fifth—*To require annual reports from carriers, to fix the time and prescribe the manner in which such reports shall be made, and to require specific answers to all questions upon which the Commission may need information.* (Sec. 20, 24 Stat., 386.) This section also authorizes the Commission to *prescribe a uniform system of keeping accounts*, to be observed by the carriers.

Sixth—*To conduct its proceedings in such manner as will best conduce to the proper dispatch of business, and to make or amend such general rules or orders as may be requisite in proceedings before the Commission.* (Sec. 17 as amended, 25 Stat., 861.)

Seventh—*To direct common carriers to cease and desist from violations of the interstate commerce law and to make reparation for the injury found to have been done.* (Sec. 15, 24 Stat., 384.)

Eighth—*To apply to the Circuit Court in a summary way for an enforcement of its orders* (Sec. 16 as amended, 25 Stat., 859); and the Commission is directed to execute and enforce the provisions of the act (Sec. 12 as amended, 25 Stat., 858), not, however, by attempting to enforce its own decrees and orders, but by calling upon the district attorneys for their enforcement. (*United States v. Mo. Pac. Rwy. Co.*, 65 F. R., 909.)

The powers, Mr. President, which I have enumerated I have expressed either in the language of the statutes or in the language of the Supreme Court construing the statutes.

\* \* \*

I have ventured the opinion heretofore that I regarded the bill under consideration unconstitutional. I now repeat that opinion, and for the following reasons:

First—It does not provide any method for challenging the unlawfulness of the orders of the Commission in a direct proceeding against the Commission.

Second—It prohibits parties affected and aggrieved by the Commission's orders from defending proceedings to enforce them upon the ground of their unlawfulness.

Third—It so heavily penalizes the disobedience of the Commission's orders as to make any attempt to secure a judicial hearing in any form of proceeding impracticable. These reasons combined manifest such an intention to exclude inquiry into the lawfulness of the acts of the Commission as to bring the measure within the principle decided in the case of the *Chicago, etc., Ry. v. Minnesota* (134 U. S.), namely, that where the statute deprives the carrier "of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy it conflicts with the Constitution of the United States."

\* \* \*

In *United States v. City of Moline* (82 Fed. Rep., 592), Judge Grosscup thus dealt with the question of the authority of administrative bodies. He said:

"In this case two questions alone arise: First. Is the bridge an obstruction to navigation? Second. Is it there by

any such legal right that the Government may not interfere with it in the respect designated without just compensation? The first question is purely administrative, and is one that Congress can certainly delegate to the Secretary of War. A thousand questions of equal moment to the parties interested, and of equal difficulty, are necessarily delegated to the great departments of the Government every month. In the very nature of things Congress can not dispose of them. A government of the size of this, operated upon such a conception would be clogged immediately. The second question is, undoubtedly, judicial, and for that very reason is not subject, constitutionally, to the decision of Congress any more than of the Secretary of War. If the bridge be there by legal right—if it be a franchise or property that can not be taken except after just compensation—Congress is powerless, either by special or general acts, to touch it. In the face of such property right Congress is as helpless as the War Department. In the end such right, whether it be attacked by special act of Congress or by some action of the War Department, will, through some channel, find an appeal to the judiciary. This right of appeal to the judiciary in all questions in their nature judicial is preserved in the sections of the statute under discussion. The Secretary of War has no power to carry out his decisions respecting these obstructions except through a court. Any question, whether law or fact, essentially judicial, may be raised under these informations. A court of the United States stands always, by the clear provisions of the act, between the decision of the Secretary and its execution. There is, therefore, in the act no delegation of judicial power to the Secretary that is not open to review in the courts. I hold, therefore, that the act, so far as it is applicable to the case in hand, is constitutional and valid, and the motion to quash will be overruled."

The motion to quash, which Judge Grosscup overruled, was made upon the ground that the decision of the Secretary of War that the bridge in question amounted to a nuisance was, under the acts of Congress, a final determination of the matter, and that such decision was not open consequently to question or review in the courts. Because of his conclusion that this was not the case, Judge Grosscup refused to quash the information.

\* \* \*

That statement refers to the statutes of sixteen States. It is, of course, impracticable for me to refer at length to each of these statutory provisions, but they have been summarized as follows:

In all the right of court review is affirmed, in some more comprehensively granted than in others, but in none wholly ignored. In Alabama the courts may examine into the reasonableness and justice of a commission's order, and appeal may be carried up to the Supreme Court of the State. The Arkansas statute allows the justice of the railroad tariff to be passed upon judicially. While the Florida law vests the railroad commission with judicial powers, it also provides that appeals "by either party" from judgments, orders and decrees of inferior courts shall be to the same extent that appeals lie "in similar cases and suits brought under any other law of the State." Indiana provides for an appeal by "a dissatisfied company or party" to its highest tribunal. Kansas has a similar provision, and there, too, the courts may inquire whether the rate prescribed by the commission is "reasonable and just." Parties in interest may carry their case up to the Supreme Court of Louisiana "without regard to the amount involved."

In Minnesota the right of appeal to the Supreme Court is elaborately provided for. Mississippi also guards the right, and declares that in trials of cases "brought for a violation of any tariff of charges as fixed by the commission, it may be shown in defense that such tariff so fixed was unreasonable and unjust to the carrier." Missouri gives the reviewing court, if it holds and decides that the challenged order of the railroad commission was not lawful, the power and right,

"without reference to the regularity or legality of the proceedings of said board or of the order thereof," to proceed "to make such order as the said board should have made." Here is a "court review" with a vengeance! North Carolina allows appeals to be carried to its Supreme Court. So do North Dakota and South Dakota. Texas also grants to either party dissatisfied with the commission's order the benefit of judicial review practically unrestricted. Virginia, to expedite decision, has enacted that all appeals from the commission "shall lie to the Supreme Court of Appeals only." Washington permits any railroad or express company "affected" by an order of the railroad commission to test its lawfulness in the superior court. In the Wisconsin law it is set forth that dissatisfied parties may begin an action in the Circuit Court of the State to vacate the order of the commission, which is made the defendant, and the court may pass upon the lawfulness or reasonableness of the commission's requirement.

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Similar provisions for a judicial review, or for judicial investigation of complaints, are also to be found in nearly all of the bills upon the subject of rate regulation that have been introduced during the present session of Congress, to wit:

H. R. 296, introduced by Mr. Richardson, of Alabama, December 4, 1905, provides (Sec. 4) for a review by the Circuit Court.

H. R. 469, introduced by Mr. Hearst, December 4, 1905, provides (Secs. 9 and 10) for a court of interstate commerce, which shall have exclusive jurisdiction to review all orders of the Interstate Commerce Commission, and that any party aggrieved may file a petition for review, such review to include the justness, reasonableness and lawfulness of the order.

H. R. 4425, introduced by Mr. Townsend, December 6, 1905, provides (Sec. 7) for review by the Circuit Court.

H. R. 8414, introduced by Mr. Sulzer, December 15, 1905, provides for judicial review (p. 2, lines 20 to 25).

H. R. 8909, introduced by Mr. Olcott, December 18, 1905, provides for a judicial review (p. 3, lines 3 to 10).

H. R. 10098, introduced by Mr. Hogg, January 4, 1906, provides for a court of transportation, which shall inquire into and determine complaints presented by a commission termed the transportation commission (p. 8).

H. R. 10099, introduced by Mr. Hepburn, January 4, 1906, provides, on page 15, for the determination by the Circuit Court of the *lawfulness* of an order, upon complaint for its enforcement, and on page 16 distinctly recognizes and refers to an assumed right of the carrier "to *injoin, set aside, annul, or suspend* any order or requirement of the Commission."

H. R. 12220, introduced by Mr. McCall, January 17, 1906, provides (p. 1, lines 11 to 13) for a judicial investigation of complaints made to the Commission and for an appeal in all cases to the Supreme Court (p. 3, lines 2 to 4).

H. R. 12312, introduced by Mr. Davey, January 18, 1906, provides for a review in the Circuit Court by any carrier or other party aggrieved (p. 11, lines 19 to 23).

S. 285, introduced by Mr. Foraker, December 6, 1905, provides (p. 3) for a judicial review in the Circuit Court upon an action for enforcement of an order, and for the right of appeal therefrom to the Supreme Court (p. 4, lines 10 and 11).

S. 2261, introduced by Mr. Dolliver, December 19, 1905, provides for the judicial determination of the *lawfulness* of an order, upon an action for its enforcement (p. 15, lines 10-15).

S. 2686, introduced by Mr. Culberson, January 8, 1906, provides for judicial review where rate prescribed by Commission is confiscatory (p. 2, lines 5 to 10).

S. 4382, introduced by Mr. Elkins, February 13, 1906, provides for judicial review by the Circuit Court, Section 3.

S. 4649, which I introduced February 22, 1906, provides for review, Section 5.

Of the remainder, practically all contemplate and refer to, although they do not expressly provide for, a judicial review.

H. R. 278, introduced by Mr. Candler, December 4, 1905, contemplates and refers to a judicial review (Sec. 7).

H. R. 184, introduced by Mr. Russell, December 4, 1905, contemplates and refers to a judicial review (Sec. 7).

H. R. 5966, introduced by Mr. Adamson, December 11, 1905, clearly contemplates and refers to a judicial review, but does not expressly provide for one (Secs. 4 and 9).

H. R. 11488, introduced by Mr. Hepburn, January 11, 1906, contemplates and refers to, but does not provide for, a judicial review (p. 10, lines 1 to 3, and p. 16, lines 5 to 7).

H. R. 12987, introduced by Mr. Hepburn, February 8, 1906, contemplates and refers to, but does not provide for, a judicial review (p. 14, lines 22 to 25, and p. 17, lines 10 to 13).

I am aware of but one bill (S. 1378, introduced by the Senator from South Carolina [Mr. Tillman]) which grants the Commission the power to fix rates, and which fails to provide *expressly* either for a judicial review or investigation, or to *recognize* a power assumed to exist in the Federal courts to review the orders of the Commission; and in that one instance it was stated at the time the bill was introduced that the reason it was not included was because the right of review already existed.

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I am constrained, however, to say that, in arriving at a correct solution of this question, it is necessary to have constantly in mind the distinction between the judicial power of the United States and the jurisdiction of the Federal courts, as prescribed by the Constitution and laws of the United States.

The Constitution prescribes that the *judicial power* of the United States *shall be vested* in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish (Art. III, Sec. 1); and in the next paragraph—

"The *judicial power* of the United States *shall extend* to all cases *in law and equity* arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls."

It will be observed that in the first case the Constitution says *where* this power shall be *vested* and in the next *to what cases* it shall *extend*, but it in no way attempts to define the power further than to indicate the three well known branches through which it operates—law, equity and admiralty. These three divisions or features of judicial power were not created by the Constitution, but were well understood and existed long before the Constitution was thought of. Thus the framers of that instrument merely adopted the system of jurisprudence then in existence and in use among English speaking people, and prescribed that the judicial system of the new nation should be founded upon the same principles of administrative justice.

It is also necessary to bear in mind the fact that the judicial power is one of the three co-ordinate powers of the Government of the United States, equal and in no material respect subordinate to either of the others. Indeed, in some respects it may be said to be the superior of the others, for it may pass upon the validity of their acts. Congress did not create this power. It exists wholly independently of that body; but while this is true, Congress has an office to perform in connection with it. This office is to create and establish the inferior Federal courts and to distribute or apply the judicial power to them. And right here is the vital part of the controversy. By the creation of these inferior courts Congress does not also create the power with which they are to be clothed. Congress merely *applies* the power already created by the Constitution. If it were otherwise, and Congress not only created the courts but the judicial power as well, then it would undoubtedly be true that Congress could likewise deprive the courts of this power by taking away one

or more of their essential and inherent subordinate powers, such as the right to issue the writ of injunction. But that is not the case. The judicial power exists inherently by virtue of the Constitution, which instrument likewise created Congress and prescribed that it should establish the courts through which the judicial power should operate.

The office of Congress is therefore to *distribute* and not to *create* these powers. This power of distribution is a step lower down in the scale than the power to create. The first is the creation of the judicial power itself. That was accomplished by the Constitution. The next step was the distribution of these powers to the Supreme Court and to the dead machinery of the lower courts. And the third and next lower step is the mapping out of the jurisdiction of the court—that is, the prescribing of the particular objects or cases upon which this judicial power shall operate, which latter in very large measure was also outlined in the Constitution.

\* \* \*

Congress maps out the jurisdiction of the court by stating upon and to what particular objects this judicial power shall extend and operate, but here its office ends. All of the decisions cited to support the proposition that Congress may take from a court of equity the power to do equity extend no further than to the *jurisdiction* of the courts. Of this Congress undoubtedly has complete control, subject to the limitations imposed by the Constitution. What, then, does jurisdiction mean? Nothing more than the right to speak. Congress can clearly say *when* the judicial power operating through the circuit courts shall speak, but not *how* it shall speak.

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I consider the question raised by the junior Senator from Texas an important one, for the reason that in it, in my judgment, centres the main point of debatable difference in regard to the pending bill. I can not but think that it will be very generally conceded that the bill must be amended so as to provide explicitly for some form of judicial review. The question this leaves for serious discussion is as to whether the amendment shall be so framed as to deny to the courts the power to suspend an order of the Commission pending its review. With regard to that proposition I can only say that it is not a question of what the Senate may *desire* to do, but of what it lawfully *can* do; and I believe it has been shown that such a provision is impracticable because it is unconstitutional.

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It is the sober truth that the courts are the guardians of our rights and liberties. It is high time that the people should remember this and should soberly reflect upon the current heresies. It is high time that public sentiment and conviction should loyally support the judicial power, recognize the patriotism and good faith of the courts, and maintain their authority and independence. If the derogatory ideas which I have heard relate to State courts, I can not challenge those who are better informed than I as to particular States, but, speaking for my own State, I indignantly repudiate that idea, and as to the Federal tribunals, I assert without fear of contradiction that to their honor, capacity and just judgments any human controversy may be safely intrusted. If now and then some unworthy judge constitutes an exception that contrast only accentuates the general record of high personnel, character and ability.

Mr. McCumber, of North Dakota, said:

Mr. President, I believe that this bill substantially as reported by the Committee on Interstate Commerce will pass this body, that it will be concurred in by the other House, be signed by the President, and become the law of the land. Then what? The worst disappointment that has ever befallen a really injured and expectant people. Why? Because the bill itself from beginning to end in its entire scope is not a bill that can possibly reach at the real things that the people

are actually complaining of; secondly, because there is not a single provision aimed at a single one of the real injustices or the evils complained of that is not already a law; and the only other important provision is one which does not remedy any existing evil, but, in my opinion, will result in incalculable injury to the whole country.

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The real root of the evil which is challenging the serious consideration of the public and creating this animosity which in the end will force paternalism upon the Government is the trustification or combination of the industries of the country. And as I have said before, we can not deal intelligently with railroad rates independent of the great corporations, which every day fix the price of the people's commodities for the next day, and even coerce the great railway systems into rebates and other unlawful devices. What will it avail the public even if in a given case a product is shipped one cent per pound cheaper from Chicago to New York if half a dozen men who own all of such commodity or control it still continue the old price?

Now, what the people really want is this: They want a law that will break every one of these great industrial concerns into a thousand different pieces. Then they want another law that will prevent them from ever combining again; and they want another law that will prevent any one of them gaining such ascendancy or growing to such an extent that it will be able again to monopolize the business of the country. And if the Senator from South Carolina, or any other Senator, can conceive of any plan whereby we can constitutionally reach that condition, he will go down in history as the greatest benefactor of the human race. I have myself found no way, but I know that those are the conditions with which we are dealing and they are the conditions about which the people are complaining.

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Mr. President, these are the conditions the people are crying against. How are you answering their complaint? If you say that the new provision in the rate bill, the only important provision which is not now the law—that of changing the rate making power from the managers to a political board—will accomplish anything in changing those conditions; if you are luring the public into the belief that this provision will answer their prayer, then certainly the Senator from South Carolina spoke with inspired wisdom when he said that this bill was one of the greatest farces ever perpetrated on the public. Of course, he said this before he knew that he was to become the stepfather of this same bill.

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Mr. President, much more intolerable than rebates is the private car system which has grown into use. It is, in effect, a system of legalized discrimination of a most offensive nature. It is but another instrumentality in the hands of the monster industrial concern to secure special freight reduction, which, with its already great advantages, makes it the easier to drive its competitor out of the country's markets.

This is accomplished in three ways:

First, by charging such a high rate to the carrying railways for the use of the refrigerator car, over and above a fair rental value, as to constitute, in effect, the equivalent of a large rebate.

Second, by making such excessive and, in many instances, outrageous charges for icing and other privileges to outside parties using their cars as to wipe out their profits.

Third, by securing from the railway companies, by the same methods adopted in forcing rebates, special privileges, such as rushing their products to their destination ahead of those of their competitors and in securing for them special terminal privileges and advantages.

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Mr. President, I make no claim to expert knowledge on the subject of railroad rate making. There are, however, a few basic principles relative to the subject which, if not



known by every person, are at least understood by those who have given the subject even casual consideration, principles which ought not to be lost sight of. We know, in a general way, how these rates are arrived at. The official charged with the rate making power on any great line of railway receives daily reports from every station along the line as to condition of crops, business, the amount of produce that will be required to be moved from each station, etc. Not only this, but he receives information directly or indirectly from points along every other railway system. Those lines he must utilize and those which are in competition with his line. He must study the market of the entire nation and the entire world. He must constantly have before him the schedules of charges for all ocean traffic, and the amount of that traffic, because he must fix his rates in accordance with it. He must understand exactly what the variation of a half cent per hundred pounds on any commodity between any points will have upon the rates and charges and business of other lines, as well as his own, so that, in fact, every agent, every employe in every station along every line of railway does his part in imparting information which shall be the basis of fixing rates from day to day. I therefore do not exaggerate when I say that it takes an army of 50,000 men to make railroad rates for the railroads of the United States. Now, we propose to place this extraordinary power in the hands of five men, who, though they be giants in intellect, could not consider the one-hundredth part of 1 per cent. of the things which properly should be considered in the matter of rate making.

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What the people want are results. They want a law that will go directly to the evil, and then they want that law enforced. They do not want the enactment of a new law which will not touch the wrong. They want a law that all rates shall be just and reasonable. They want a law that no preferences will be given to the great shipper over the small shipper. They want a law that the owners of special cars shall not have such privileges as will enable them to drive out of business concerns so small that they can not afford to manufacture their own special cars. They want a law that no rebates of any character shall be allowed any person whereby he gains an advantage over others. In a nutshell, they want simple justice and fair play. And I believe that they want another thing which the press have forgotten to agitate. The people in business, representing all characters of enterprise, are compelled to compete in the open markets of the world and against immense business interests. They therefore have a right to demand, and do demand, that the railways which carry their products shall also be compelled to compete for them; and they want no law which will allow a commission, through the rate making power, to destroy that competition.

Mr. Carmack, of Tennessee, said:

The demand for this legislation does not come from mischief making agitators or professional corporation baiters, but from practical, conservative men of affairs who, as a class, are most strongly averse to radical changes in existing law. We have been warned that this measure will be far reaching in its consequences. I hope and believe that this is true. I believe that in its practical workings it will remedy evils of which the people justly complain and without bearing harshly or unjustly upon the business of railroad transportation. I believe that it will remove a great source of popular discontent and that the fears of the railroad companies will prove to be nothing but horrible imaginings. If such shall be the result, this measure will be not only far reaching, but universally beneficent in its effects. But if this measure is defeated or is craftily deformed so as to obstruct the perfect administration of the law and disappoint the just expectations of the people, the consequences will be found more far reaching, and those who now complain of radical legislation may live to see some that is radical, indeed.

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There has been much discussion here upon the question of

a judicial review, if that be the proper term, of the acts of the Commission. My opinion, in brief, is that the railroad companies already possess under the Constitution all the rights that need be or can be given them by Congress. Whenever the rates fixed by the Commission are so low as to amount to the taking of property without due process of law or the taking of private property for public use without just compensation, such a rate may be attacked in the courts and overthrown. We could not, if we would, deny the railroad companies this right, and we need not, and, in my judgment, should not, attempt to confer a right which already exists by virtue of the Constitution and which we can neither abridge nor take away.

My judgment, in brief, is that we should clothe the Commission with power not only to compel the discontinuance of a rate found to be unjust and unreasonable, but to compel the substitution of a rate which it finds to be just and reasonable, and leave the railroads to their rights under the Constitution. On the other hand, there should be nothing in the bill that would seem to deny the railroads their constitutional right of appeal to the courts for protection.

Mr. Clay, of Georgia, said:

Congress can not delegate to a commission power to make any other rate except one that gives to the carrier just compensation for the service performed; if Congress delegates to the Commission the power to fix a rate that gives just compensation for the service performed the carrier can not be deprived of the right to go into the court and test the question of the rate fixed being just and reasonable. The Constitution of the United States gives to the carrier the right to go into court and determine whether or not the rate fixed is one that gives just compensation for the service performed.

Take the legislatures of the different States. The Legislature of my own State has passed a bill creating a State Commission. The courts have held that where that commission fixes a rate that is not compensatory, that is confiscatory, notwithstanding the fact that the law is silent on the question of review, the railroad has the right to go into the existing courts and have determined whether or not the rate is a confiscatory rate.

Congress can not pass a law, Mr. President, depriving the carrier of that right. Congress ought not to pass a law depriving a carrier of that right. In my opinion, if the bill gives the power to the Commission to fix a rate and is silent so far as review by a court is concerned, and provides that the standard fixed by Congress shall be a just and reasonable one, then the carrier would have the right to go into existing courts and have determined the question whether the rate fixed is a constitutional and compensatory rate.

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When the Interstate Commerce Commission come to fix a rate—they are a body of able men, lawyers and business men—they hear all the facts, all the circumstances; they go over the situation. Then the Commission fixes what, in its judgment, is a just and reasonable rate. If there is an attempt to review that rate in the court—and I am clear that the right exists—the court ought to be confined to the question whether or not the Commission has violated the legislative will of Congress and fixed a rate that is confiscatory or that does not give just compensation for the services performed by the carrier.

Do you know that when the Commission acts it is Congress? We delegate to the Commission the right to act. We fix a standard for the Commission—that the rate must be reasonable and just—and we say to the Commission, "You must not go beyond that standard," and when the Commission has acted, it is the act of Congress; and the courts ought to be slow to set aside a rate fixed by the Commission unless there has been a flagrant violation of the law.

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I have not been able to find any decision of the Supreme Court that settles to my satisfaction the point to which I have just alluded. We all agree that the Commission should

be given the rate making power, or at least a large majority of the Senate agree to this proposition, that the Commission shall also be given the power to prevent undue discrimination as between persons and places and unjust preferentials. The rate fixed by the Commission, indirectly speaking, is the rate fixed by Congress. When the Commission corrects any undue discrimination or unjust preferential, its action, indirectly speaking, is also the act of Congress. Congress not having the time to devote to these details has delegated to the Commission the power to act in the premises. When the Commission has acted, the presumption is that the rate fixed by the Commission is both reasonable and just, and this rate ought to go into effect until set aside or reversed. The controlling question that seems to be dividing Senators is, "Ought or can Congress deprive the courts of the right of temporarily enjoining the rates fixed by the Commission until a final hearing?" To my mind, as a question of policy or justice, this is easily answered. If Congress has provided a Commission of able and impartial men to hear disputed facts and ascertain what are reasonable and just rates, then ought these rates so ascertained and fixed be set aside and a rate substituted therefor by the railroads until the case is fully heard and disposed of?

Ought any court to be permitted without notice and without hearing to set aside the solemn act of Congress through its Commission? As a matter of justice and right, I would say "No." The presumption is that the Commission has acted honestly, intelligently, and that its findings are just both to the roads and the shippers, and the railroads and the people ought to abide by these rates until there is a full and complete hearing, and a reversal of the findings of the Commission. When a suitor goes into court contesting the acts of Congress, such suitor ought to be bound by such acts of Congress until the same are set aside.

If there were no constitutional objections in the way, I would say, by all means, that the rates fixed by the Interstate Commerce Commission ought not to be disturbed in any way until a final hearing, and until set aside by a court on final hearing. But the question presents itself to my mind, Can Congress limit the power of the courts so as to deprive the carrier of the right to go into equity and restrain a rate alleged to be unconstitutional?

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Whether or not Congress can prohibit the courts from granting such a temporary injunction, to my mind, is not a settled question. The ablest lawyers in this Senate, after a most thorough investigation, have taken different views as to the constitutionality of such a right. Such a provision can be inserted and its constitutionality determined without in any way affecting the remainder of the bill. By no means should such a provision be interwoven with the remainder of the bill so as to affect other features of this legislation in the event such provision should be declared to be unconstitutional. The people expect us to give them a bill that will stand the test of the courts and we can not afford to take any chances whereby this entire legislation may be declared unconstitutional.

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The idea that any legislature, either State or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law is in opposition to the theory of our institutions, as the duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. The reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier or the profits derived from that business. The State can not justify

unreasonably low rates for domestic transportation considered alone upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control; nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is, therefore, under governmental control, subject, of course, to the constitutional guaranties for the protection of its property. It may not fix its rates with a view solely to its own interests and ignore the rights of the public; but the rights of the public would be ignored if rates for the transportation of persons or property on a railroad were exacted without reference to the fair value of the property, for the public, or of the services rendered, and in order simply that the corporation may meet operating expenses, pay the interest on its obligations and declare a dividend to stockholders.

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After mature deliberation I have reached the following conclusions, and my vote shall be cast to put into law these conclusions if I have an opportunity to do so.

First—I believe that ample power is conferred upon Congress to regulate and control interstate freight rates and that Congress can prescribe a standard of rates that are just and reasonable, and then delegate to the Interstate Commerce Commission authority to ascertain what rates will come up to the standard fixed by Congress and empower the Commission to put such rates in operation.

Second—Congress must fix a standard that is just and reasonable, that will give to the carrier reasonable compensation for the service performed, and that the Commission will be empowered to fix rates in accordance with that standard.

Third—That the rates put in operation by the Commission are, in effect, rates fixed by Congress, and that such rates express the legislative will of Congress, and should be put in operation within a reasonable time after such rates are prescribed by the Commission, and should remain in operation until set aside by a court on constitutional grounds, after notice and hearing, namely, that such rates are not compensatory for the services performed. I do not believe that the legislative will of Congress should be interfered with by interlocutory orders and temporary injunctions, at least without notice and a full hearing. The courts should be slow to interfere with rates fixed by an impartial and intelligent commission. This Commission represents Congress, and the rates fixed by the Commission are presumed to be just and reasonable and should not be enjoined or set aside without notice and a full and complete hearing in court. The rates fixed by the Commission are presumed to be correct and should not be interfered with until set aside on constitutional grounds.

The carrier and the shipper should both be given the right to go into existing courts and have determined the question as to whether or not the rate fixed gives just compensation for the service performed. The right to review should be limited to this question. If the rate is confiscatory and does not give just compensation to the carrier, it ought to be set aside. If, on the contrary, the rate is too high and gives more than just compensation to the carrier, the shipper should have the right to have this question determined and to have the rate set aside. If the Circuit Court should determine that the rate fixed by the Commission is a reasonable and just one and should decline to interfere with it, the right should be given to go directly to the Supreme Court and the rate put in operation by the Commission should remain in effect until the final disposition of the case in the Supreme Court.

Fourth—Railroads should not be permitted to engage in any other business except that of common carriers. The officers and directors of these corporations should not be permitted to engage in the coal, oil, or any other business whereby such common carriers come in competition with the private citizen engaged in the same business. The idea that a common carrier can buy up timber lands, oil and coal fields, and haul its products to the detriment of private citizens who are competitors is wrong and vicious and should be prevented by statute.

These conclusions are reached after careful thought, and when put into a statute will protect both the carriers and the shippers in the enjoyment of their just rights. Such legislation will have my hearty approval.

Mr. Fulton, of Oregon, said:

It would not be accurate to say that the suggestion of government control and regulation of rates, fares and charges of transportation lines is a suggestion of a new governmental policy, because in truth it is a policy that has obtained in many of the States for a considerable period of time; it is a policy that was long since adopted by many of the leading countries of Europe, and is still adhered to in one form or another. That it is a problem replete with difficulties and perplexing questions, particularly in this country, with its wide area and vast internal commerce, is quite generally conceded. Hence it is not surprising that even among those who are most earnestly favoring legislation of this character there should be wide differences of opinion touching the methods to be employed, nor is it any impeachment of one's sincerity or zeal that his ideas upon a subject so fraught with difficulties and complex questions should not be in accord with the views or convictions of some other person or of many other persons. Nor should the public conclude that simply because the members of a legislative body, confronted with a great governmental policy or proposed policy such as this are disposed to move slowly in solving it, to study it from every possible point of view, that they are wanting in either earnestness or patriotism.

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I hear Senators referred to on the one hand as railroad Senators and on the other hand as the foes or opponents of corporations, corporate wealth, corporate power, and all that sort of thing. I sincerely trust that I am neither. I hope that I am a friend of railroads and of every other legitimate commercial and industrial enterprise. I would not knowingly cast a vote the effect of which would be to embarrass or cripple any legitimate industry or business. We are called upon, however, by legislation to regulate the conduct of individuals, and in a greater or less degree every character of business. That we find it necessary to exercise a higher degree of care and to provide for a wider degree of control and regulation of so-called "public service corporations" than of other business enterprises is due entirely to the fact that the relation of these corporations to the public is in a large degree that of governmental agencies, clothed in a great measure with governmental powers. But in enacting legislation of this character we must take care that we neither sacrifice the interests of the public, on the one hand, nor render it impossible, on the other hand, for those who have invested their money, their savings and their earnings in these corporations to earn a just and reasonable compensation for the services that they perform. To do the one would be to prove false to the trust with which we are charged. To do the other would be at once to discredit ourselves and our country.

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It is my contention—and that is the question I propose to discuss here—that it is not a wise public policy to grant the unlimited privilege of right of review. I am ready to concede that every man is entitled to be protected in the enjoyment of his constitutional rights, and that no attempt should be made to deprive any person of his property without the just

compensation required by the Constitution, but it is my conviction that under this bill, as it stands, every right of that character is fully and amply protected.

To whatever extent judicial review is necessary in order to protect a carrier in the enjoyment of his or its constitutional rights, I stand for. But manifestly, as I shall attempt to show, there are numerous regulations it will become the duty of the Commission from time to time to prescribe that are purely administrative in character. In the matter of discriminations, for instance, between persons in the sale of tickets; in the matter of passenger accommodations; in the matter of furnishing cars; in the matter of rebates, side track connections and numerous regulations of like character, all purely administrative, into which the questions of deprivation of property or of taking property without just compensation can not possibly enter, the orders of the Commission should be final, and they will be under this bill, for relative thereto no constitutional question can arise. Whenever constitutional rights shall be invaded the carrier will have, as I shall undertake to prove, under this bill as it now stands, the right to invoke judicial review of the Commission's orders.

That right he should have; that right we can not, and there is no attempt in this bill to deny. Beyond that it seems to me he ought not to be permitted to go.

Mr. Long, of Kansas, said:

The courts of the United States can be relied upon to protect any person, whether an individual or a corporation, in his constitutional rights, for they have always done so in the past; but I do not believe that Congress should endeavor to transfer or delegate to the courts its constitutional power to regulate interstate commerce. It is a great and important function and Congress will prove recreant to the trust reposed in it by the American people, and we will be violating the plain provisions of the Constitution if we seek to perform this function in any other way or manner than that marked out by the Supreme Court of the United States. Rate making will, after this bill becomes a law, be intrusted to the carrier, as it is today. The only difference will be that the Commission will have authority to fix a maximum limit, beyond which the carrier can not go in making its future rates. Congress in this bill provides what that limit shall be, and has delegated to the Commission the duty of ascertaining the facts and applying the limitation. It is essentially an administrative function that is delegated to the Commission by Congress, and not legislative. It is a function that can not be imposed upon the courts, and the attempt so to transfer it should not succeed. It would be doing a great injustice to the public to attempt to take from the courts their present power to protect the lives and property of the people when invaded. It also would be a great calamity and unworthy of us as representatives if we attempt to transfer to the courts a duty and responsibility which is imposed by the Constitution upon Congress.

I believe that this legislation is necessary. I believe that it is wise, prudent and desirable to have a subordinate tribunal to Congress, to which complaints can be made against rates fixed by a carrier and which has the authority, after a full investigation, to set aside the challenged rate and substitute a maximum rate which, in its judgment, is just and reasonable. I believe that this power should be carefully guarded and restricted and that no attempt should be made to restrict or limit the court in its power to prevent injustice, to prevent action beyond the authority conferred by the laws and the Constitution.

We hear much in these days about the injustice of the courts and their assumption of powers not warranted by the laws and the Constitution, but it is gratifying also to know that from the possible aggression of the executive or legislative departments there is a refuge in the courts for an invasion of personal rights, and that there, independent of statute, independent of legislative or executive authority, the rights, liberties and property of the citizen can be successfully de-

fended and amply protected. I do not at all agree with the criticisms that have been made in this debate upon the judiciary of the United States. I think that the judges of our district, circuit and supreme courts are generally sincere, honest, faithful public servants, and that they are endeavoring to perform their difficult duties in a way and manner that will meet with the indorsement and commendation of the people; but while I recognize that the courts are always a harbor of refuge for the injured and oppressed, yet I also know that the Constitution imposes certain duties upon Congress, among which is the regulation of commerce among the States, and that Congress can not and should not attempt to exercise this duty by either directly or indirectly transferring it to the courts.

Mr. Stone, of Missouri, said:

If the bill should be enacted in its present form, and the Commission should prescribe a rate which was confiscatory or non-compensatory, could there be any doubt that the carrier affected would have the right, under existing law, to apply to a circuit court for relief, or that the court would have power to grant whatever relief the nature of the case might warrant? If the bill should pass in its present form, could there be any doubt that the same jurisdiction would attach if a rate established should not be fairly remunerative? Under the powers now possessed and exercised by the circuit courts can there be any doubt that they would take jurisdiction of any cause, involving a sufficient sum, which concerned a rate alleged to be confiscatory or non-compensatory? If that be true, then the power of judicial review exists already, and there is nothing in this bill which seeks or pretends to divest the courts of that power or to limit them in its exercise. There is, therefore, no need of a special provision to confer a jurisdictional right of review. The real question is not whether this power of review shall be conferred upon the courts, but whether it shall be enlarged upon the one hand, or withdrawn or limited upon the other. This bill proposes to enlarge it. It proposes to authorize the courts to determine not only whether a rate is confiscatory, but whether it is fairly remunerative. Whether this jurisdiction should be enlarged is a question of such doubtful wisdom that I hesitate to approve it. I doubt whether the jurisdiction now exercised by the courts can be wholly withdrawn, and I am confident it ought not to be. Railroads are sometimes guilty of flagrant abuses, but for that reason, no matter how outrageous their offending, they should not be shut out of the courts and put wholly at the mercy of an administrative board. Because they offend, because they do wrong to others, is no reason why the Congress should deny them access to the courts of justice. That they should be curbed, restrained, regulated, is manifest and imperative; but that they should be outlawed is absurd. When their rights are in jeopardy they are entitled to a hearing. Undoubtedly, in my opinion, the Commission should be given authority to prescribe rates to be charged and regulations to be observed by the carriers; but the rates and regulations should at least be just and reasonable—actually so. If any rate so prescribed should be unjust, or should not be compensatory, it should not stand; and if any regulation prescribed should be unjust or unreasonable, it should be set aside. I do not think any fair minded man in or out of Congress will controvert that. It follows, then, that if the Commission should adhere to an order which a carrier might deem to be unjust and unreasonable, the controversy must be settled in the courts. It must be settled in the courts because there could be no other forum for settling it. I can hardly believe that any Senator would deny jurisdiction to the courts to hear and determine controversies of that character, even though he believed that Congress had power to deny it. If that be true, Mr. President, as I am sure it is, then it is useless to discuss the question as to whether Congress could, by affirmative enactment, place the orders of the Commission above and beyond the reach of the courts. There is no use

talking about something nobody wants to do, and which many think can not be done. We had better discuss things which some of us, at least, think ought to be done, and some of us think we have power to do.

Mr. Gamble, of South Dakota, said:

Mr. President, I do not have any misgivings as to the effect of the proposed legislation on railway property or railway interests. It has been apparent to any one at all conversant with the conditions existing for the past year and upward that Congress would take cognizance of the question and that legislation along the lines proposed in the pending bill would be enacted. Notwithstanding this railway securities have in no way been depressed, nor have investments been discouraged therein. At no time in the history of the Government has there been greater confidence in these properties. Unusual investments have been made in betterments, in extensions and in general railroad development. The literature published and sent broadcast by the railway interests to resist any and all legislation upon the subject has been appalling. The fears expressed and prophecies made as to the harmful effect of the proposed legislation does not seem to impress itself, so far, upon either the investments or the properties, or to discourage further development and extensions.

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The courts now are and have been open to litigants. But it must be conceded that the remedy is practically ineffective and largely abortive. The parties to the contest are unequal. The facts are largely in the possession of the railway company. Too often the shipper is practically at the mercy of the carrier. He hesitates to initiate a contest, fearing as a result the burdens upon him may be made more onerous. The amount involved as to the particular complaint may not be large, and he hesitates to enter into a contest that often concerns the community as well as himself, and he alone assumes the responsibilities. The preferences given to a competitor may in itself be sufficient to overcome him and he is practically helpless. The delays incident to the litigation as a rule are so great that the relief, if secured, might be valueless under changed conditions.

Mr. Newlands, of Nevada, said:

The people will look for simplicity in whatever plan of relief is proposed, and unless we unify and simplify the control of transportation in a few thoroughly regulated great national corporations, whose finances and operations can be easily understood, and whose functions will be entirely taken out of politics, they will drift into national ownership as the easiest solution.

The argument in favor of a national ownership is a taking one. Outside of the United States three-fifths of the world's trackage is in national ownership, and not a single nation that has entered upon national ownership is inclined to withdraw from it. Japan, only recently coming out of the stress and strain of a great war, has passed an act for the purchase of all private railroads in Japan, at a cost of \$250,000,000.

The plan of acquiring national ownership would not be difficult. It would not involve the entire readjustment of the present system. It would be easy to authorize the Interstate Commerce Commission to institute suit and condemn the shares of stock of all the railroads in the country engaged in interstate commerce, leaving the bonds outstanding as a lien upon the property. Thus the interests of the stockholders would be purchased by the nation and the Interstate Commerce Commission could step into the position of director of the various corporations, with their present organization of officials and employes, and could gradually work out a method of national administration.

The present gross revenue of all the railroads would be amply sufficient to pay all the fixed charges of the companies and the low rate of interest upon the Government bonds issued for the purchase of stock and produce a surplus which would make ample provision for betterments and extensions,



and also provide a sinking fund which would extinguish the debt before many years.

Or, should the country determine to take hold simply of the new construction of the future, leaving the existing railroads in the hands of their present owners, the Government could easily build a railroad of 3,000 miles across the continent from the Atlantic to the Pacific, which would become the spinal column of a great governmental system.

Government ownership presents no difficulties, either constitutional or practical, and the country will certainly drift to it unless the existing abuses of uncontrolled monopoly, of overcapitalization, of accomplished union between the producing and transportation interests of the country, of political control, and of unjust preferences and discriminations are done away with. Even assuming that the government management may not be economical, the time may come when the people will regard equality of service as of more importance than economy of service. But the plan of national incorporation would give the country the benefits of government ownership with none of its dangers. It would abolish the evils which have arisen from unrestricted monopoly, automatically bring about a reduction in rates, put the railroads out of politics, and retain the management of the able men whose genius created our present efficient system of transportation. No complaint can be made as to this efficiency; no complaint can be made as to consolidation properly controlled in its capitalization. No attempt should be made to raid the property of railroad investors. No attempt should be made to destroy or impair the existing values of their securities. Unity of control, simplicity of organization, certainty in valuation of railroad property and in return upon such valuation to the stockholders, certainly in taxes, fair recognition of the dangerous character of the service of the employees, proper provision for insurance against accidents and old age, conciliation of disputes between the carriers and their employees, are parts of the full and comprehensive legislation which this subject requires and which would differentiate our legislation from the incomplete and fragmentary legislation in which Congress has thus far indulged regarding interstate transportation.

Mr. McLaurin, of Mississippi, said:

I am not one of those, if there be such, who believe there granted, and in a President the executive power, and the the carriers, as if the carriers themselves were not a part of the people. Nor do I believe that the enactment of laws defining limits higher than which carriers shall not go in the collection of tolls for carriage implies a distrust of the whole body of carriers any more than I believe that the enactment of laws for the punishment of the faithless officials implies a reflection upon the integrity of office holders generally.

I believe the law should regulate the transportation of property wholly by water, as well as wholly by railroad, but inasmuch as the bill in its present shape—and I fear in the shape in which it will appear when the Senate shall have done amending it—omits transportation wholly by water and thereby practically confines it to railroad regulation. I will briefly refer to it from this aspect.

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After vesting in Congress all legislative powers that are granted, and in a President the executive power, and the courts the judicial power of the United States all the powers of this Government were vested. The intention of the framers of the Constitution was to say that the power of each department shall be distinct and exclusive. It follows, then, mathematically, that none of the departments can constitutionally exercise any power that pertains to the jurisdiction of either of the others.

For instance, Congress can not try causes involving the rights of litigants, nor enter decrees, nor set aside verdicts, but it can, and it is its duty to, enact laws by which the trial of such causes shall be conducted, decrees entered and ver-

dicts set aside. Courts can not make laws prescribing what is right and prohibiting what is wrong, but they can, and it is their duty to, try the causes of litigants, adjudge the causes, decree what is right, and enjoin what is wrong, according to such laws enacted by Congress.

One of the earliest things I learned in law is that a court is a place where justice is administered according to law. This is the judicial power of the United States, to administer justice according to the laws of Congress and the Constitution. The laws of Congress are no less obligatory upon the courts than the laws of the Constitution. Where acts of Congress conflict with the Constitution they are not laws; but where there is no such conflict the acts of Congress are as binding upon the courts as any mandate or prohibition or vestment of the Constitution.

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When this bill shall become a law—as I am confident it will in some shape—let it be a law that will give the full measure of relief and remedy craved by the people. Do not let it be an act to pacify public demand without filling the measure of public hopes.

Mr. Morgan, of Alabama, said:

The bill claims to be an amendment of the existing law. In fact it is a repeal of that law in some of its vital principles which are, in its actual recitals, based upon the express language of the Constitution of the United States. These principles, which relate expressly to the right of trial by jury and to the constitutional separation of the jurisdiction of the courts of law and courts of equity, are excluded from this bill and repealed by its provisions, for the manifest purpose of preventing the people from exercising the right to demand jury trials in the Federal courts and in all other courts on the question of rate charges of railroads engaged in the transportation of interstate commerce. The reasonableness of such rates is always a question to be tried by a jury that no State or Federal court can take away from either party to a suit when the remedy at law is plain, adequate and complete. Verdicts of juries settle all questions of the reasonableness of charges by common carriers in suits in the courts of law, and their verdicts are final when they are not set aside on motion for a new trial. These rights, secured by the Seventh Amendment and so stated in the existing law, are stricken out of this bill.

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Such water competition in transportation as the people of the Gulf and Atlantic coasts are engaged in preparing to compel the railroads to cease from troubling, will soon dispense with the necessity for all the anguish we are suffering about interlocutory injunctions.

Within the watershed of the Mississippi River the lines of transportation that belong to the people are worth millions as a permanent source of wealth and as facilities for transportation, where the railroad lines are worth only thousands of dollars.

If Congress will do its duty even in a parsimonious way in the improvement of our water courses under scientific direction and practical methods, and will place river and harbor bills on a footing with post office bills and Army and Navy bills as standing orders for the public service, the people will soon be snapping their fingers in the faces of the railroad monopolists as to their control over their industries, and Congress will be as reluctant to fix prices on the carriage of commerce by rail and water as it has been since the Constitution was ordained to fix prices on transportation by water, and peaceful competition will restore honesty and justice to their rightful authority.

If the money that has been spent and will be spent in the effort to control the railroads by legislation, under powers that are strenuously controverted and are at least doubtful, had been and should be applied or could be applied hereafter

to the improvement of our navigation, the railroads would cease to do evil and would learn to do good.

I freely and regretfully admit that evils of great magnitude and of deplorable consequences exist in the monopolistic abuses of the rights and duties of railroad corporations that the States have created and have failed to properly control, and I am anxious to exercise all the powers of Congress in controlling and punishing the malefactors. But I am unwilling to have this duty embarrassed with protracted litigation, which a simple change in the attitude of Congress would readily prevent; and I revolt at the thought of making these wrongs a pretext for setting aside the courts and the Constitution, in order to hand this contest over to the manipulators of political campaigns, or to the keeping and control of those who are the enemies of the system of just protection to life, liberty and poverty that our Constitution embodies, that our laws respect and is the noble foundation on which our national reputation is built.

Truth, justice, obedience to law, patience in growth and faith in our future, based upon the belief that a nation is blessed whose God is the Lord, will become the final and happy revelation of our splendid destiny.

I look for the best results when the States and the Federal Government, freed from jealousies, are recognized by all classes and sections as coworkers for the general welfare, and I know that their earnest co-operation is the true key that will unlock the tangle that this bill is about to make permanent and dangerous, if not destructive, to the welfare of the country.

Mr. Elkins, of West Virginia, said:

The duty now devolves upon the Senate to say whether there shall be amendments to the bill, and to what extent. It is the opinion of many Senators who have given the subject careful consideration that the bill should be amended and in a way that will remove doubts as to its constitutionality and make its provisions clearer and stronger in the direction of affording remedies for existing abuses. I favor heartily the objects and purposes of the bill and I will vote for it, but I want to make it better and stronger.

My chief objection to the bill is that it does not go far enough. It makes no attempt to provide remedies for many existing abuses by railroads. If the bill becomes a law without amendment it will disappoint the people, and they will justly cry out against Congress for not doing its duty, especially against those now most vehement in their denunciation of railroads and their unjust practices, and still refuse to put anything in the bill to correct them.

The main purpose of the Hepburn Bill, among other things, is to provide a more efficient remedy against excessive rates in which all agree. I regret to say, however, that there are evils, injustices and abuses by railroads for which the bill does not even attempt to provide a remedy. It makes no provision:

First—To prevent interstate carriers producing, mining and selling coal, iron ore and other products which they transport in competition with shippers, thereby oppressing and driving out of business the independent operator and absorbing his business.

Second—To oblige interstate carriers, on application of shippers of interstate commerce, to put in when needed, upon reasonable terms, switches to enable such shippers to get their products to market. There are instances where shippers have spent hundreds of thousands of dollars in equipping mines and mills to do business, and railroads have denied them switches and connections.

Third—To compel interstate roads to make prompt and suitable connections with connecting branch and lateral lines, as well as just, fair and reasonable prorating arrangements with the same and allowances for originating freight.

Fourth—To require interstate carriers to make a fair and just distribution of cars among shippers on their lines.

If the right to suspend the order of the Commission in the discretion of the court should be denied, this might work serious results from a practical standpoint. Should the Commission find the rate named by the carrier excessive and reduce it, and the reduced rate goes into effect at once and remains until the final hearing and determination of the action to set it aside in the Circuit Court, then this new rate, pending the litigation, would have to be published as all other rates, and if the rate reduced affects other rates—and it may affect hundreds of other rates—then all of these rates would have to be reduced, go into effect, and likewise be published.

If the court should hold that the carrier was right and the rate it made in the first instance was not excessive, then the reduced rate and all other rates changed would be restored.

The price of products would have to be advanced or reduced accordingly as the changes might take place in the rates. It takes time for merchants, shippers and communities to accommodate their business to changed rates, because changes in rates bring about changes in prices. In any event, from a practical standpoint, there should be as few changes in rates as possible. But if the order made by the Commission naming a substitute rate should be suspended pending a suit, this should be done only upon the condition that a deposit in money is made in court by the carrier sufficient to pay back to the shipper the difference between the rate made by the carrier and the one made by the Commission and suspended by the court. In this way the shipper would be absolutely protected without being required to sue the carrier for the difference he may have paid. For my part I would prefer, if it could be done, that the substituted rate made by the Commission go into effect within a reasonable time and remain in force until the determination of any suit to set it aside; but able lawyers say that the courts have the right upon proper showing to grant interlocutory injunctions, and this right can not be taken from the courts.

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Making and adjusting railroad rates, even by the most experienced office managers, is most difficult. Presidents of railroads and boards of directors rarely have anything to say or do about making rates. This intricate and complicated duty is confided to the traffic managers and their subordinates. They must keep their fingers on the commercial and industrial pulse of the country every moment to know what to do in the matter of adjusting rates; they must confer daily with thousands of business men all over the country and be in touch with every movement of the markets. Generally market conditions and competitive industries determine rates and not traffic managers; they simply respond to these conditions. The Weather Bureau records the weather but does not make it.

Three hundred rate schedules are received daily by the Interstate Commerce Commission; the present annual average is 100,000 schedules. From 1887 to 1904 there were 2,358,960 rate schedules filed in the office of the Interstate Commerce Commission. A rate may be profitable today and not profitable tomorrow. Rates reasonable on one line may be unreasonable on another to the same or different points, though the distance be the same. If railroads can have loads both ways for a year or even a month they can make lower rates than if they have loads only one way.

These and many other factors that might be mentioned enter into the making of railroad rates, and make their adjustment complicated, intricate and difficult. The regulation of rates and the prevention of all sorts of abuses, discriminations and rebates should be left to the Government—the management of railroads to their owners.

The hearings before the Interstate Commerce Committee show, and all agree, as a general rule the great majority of shippers are satisfied with the rates made by railroads; that rebates and discriminations are growing less, as the present

laws are executed and they are being enforced vigorously; but this, as I have said before, is no reason why there should not be the strictest regulation against excessive rates and abuses of every kind, so as to protect the people and minimize evils and abuses. Because people are, as a rule, honest is no reason why there should not be laws against dishonesty, murder, burglary, larceny, embezzlement, etc.

The aim of wise statesmanship should be to so adjust matters by proper legislation that the shipper and producer can make a fair profit on their products, the railroad a fair return for the service rendered, and the consumer get what he buys at a fair price.

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The general principles underlying and applicable to the power of Congress over the subject of rates by interstate carriers may be stated as follows:

1. At common law a common carrier is prohibited from making any unreasonably high charge for its services, and this prohibition has been incorporated in Section 1 of the Act to Regulate Commerce. (Int. Com. Com. v. Railway Co., 167 U. S., 479, 505.) Thus the shipper has a common law and statutory right of protection against unjustly and unreasonably high rates.

2. To decide, upon the evidence, in a case properly before the court, whether any rate charged by a common carrier is unreasonably high, or, in other words, in excess of the maximum rate which would be reasonable, has always been regarded as a judicial function. (Chicago, etc., R. Co. v. Iowa, 94 U. S., 155, 161; Chicago, etc., R. Co. v. Minnesota, 134 U. S., 413, 458; Reagan v. Farmers' Loan & Trust Co., 154 U. S., 362, 397.)

3. Any governmental regulation establishing rates for the transportation of persons or property which will not admit of the carrier's earning such compensation as under all the circumstances is just to it and to the public would deprive such carrier of its property without due process of law. Such regulation, if by State authority, would violate the Fourteenth Amendment to the Constitution of the United States (Smyth v. Ames, 169 U. S., 466, 526); and, if by Federal authority, would obviously violate in the same way the Fifth Amendment to the Constitution of the United States. Thus the carrier has a constitutional right of protection against unjustly and unreasonably low rates.

4. The determination of the question whether a governmental regulation establishes rates for the transportation of persons and property so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures is a subject of judicial inquiry. "The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation." (Smyth v. Ames, 169 U. S., 466, 526, 527.)

5. There may be, and generally would be, a wide range between, on the one hand, the highest rate which a common carrier could impose on the shipper without violating the shipper's common law and statutory right to be protected against an unjustly and unreasonably high rate, and, on the other hand, the lowest rate which governmental authority could impose on the carrier without violating the carrier's constitutional right to be protected against an unjustly and unreasonably low rate. Between these two extremes there may be many different rates, each of which would necessarily be just and reasonable, because not transgressing either one of the two limits of justice and reasonableness.

6. The governmental power to prescribe rates for carriage by a common carrier is a legislative and not an administrative or judicial function. (Int. Com. Com. v. Railway Co., 167 U. S., 479, 505.)

7. Congress having the power to establish the interstate rates of common carriers, it would follow that Congress would have an unlimited discretion to fix any such rate at any point between the maximum rate which the carrier could

lawfully charge the shipper and the minimum rate which Congress could constitutionally impose upon the carrier. This would be a wide range of discretion, and would be a purely legislative discretion.

8. That legislative power cannot be delegated to any other officer or tribunal is well established and is fully recognized in the case of *Clark v. Field* (143 U. S., 649). Hence it follows that Congress can not delegate to the Interstate Commerce Commission the discretionary legislative power which Congress has under the commerce clause, whereby Congress may fix any interstate rate of a common carrier at any point between the maximum reasonable rate which the carrier could lawfully charge the shipper and the minimum rate which Congress could constitutionally impose upon the carrier.

9. The Attorney General, in his letter of May 5, 1905, to the chairman of the Senate Committee on Interstate Commerce, holds that the only way in which a rate fixing power can be conferred upon the Interstate Commerce Commission is for Congress to enact into law some standard of charges which shall control, and then to intrust to the Commission the duty to fix rates in conformity with that standard. In this I fully agree.

10. It would seem to follow from these premises—

First—That any legislation attempting to confer upon the Interstate Commerce Commission the power to fix rates will be unconstitutional unless it prescribes "the standard of charges which shall control," and requires the Commission to conform thereto in fixing rates.

MR. ELKINS.—Second. That any legislation attempting to fix rates would be unconstitutional whose practical effect is to deny to common carriers the right to invoke and obtain, in due time, the protection of the courts from being compelled to transport persons or property at rates which violate the carrier's constitutional rights.

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In order to insure a judicial review which will adequately protect the property and interests involved, and which will operate as a conservative influence over the Commission itself, it is important for the act to define the Commission's jurisdiction and make it depend not upon the Commission's opinion, but upon the facts, and for the act to show that the Commission shall make no greater change than is necessary to prevent rates from being unreasonably high. This can be accomplished by authorizing the Commission to change rates only when the existing rates are unjust and unreasonable, and only so far as may be necessary to remove such injustice and unreasonableness. In this way it clearly becomes a judicial question for the court to determine whether the Commission has exceeded its jurisdiction, and if the Commission has exceeded its jurisdiction its order can be set aside. There is no other way in which Congress can make sure that an adequate judicial review can be provided.

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Mr. President, this great debate, which will stand in history as a monument to the ability and conservatism of the Senate, participated in by some of the ablest and most distinguished Senators who have ever adorned this illustrious body, and which has so instructed and illumined the country, has been for the most part along legal lines. In what I have said I have tried in a brief way, imperfect as it may be, to bring to the attention of the Senate and the country some of the practical workings of the bill. I realized, however, that no treatment of this great question, perhaps the most important economic question ever presented to the Senate, could omit some discussion of the legal principles involved. I felt that the subject had been almost exhausted, and I ventured with some hesitancy and much diffidence to follow the great speeches that have been made, knowing that I must touch upon some of the points which have been so ably discussed with more knowledge and far more ability than I possess.

Mr. Latimer, of South Carolina, said:

Government regulation of railroads is not a new proposition. Many of the States have commissions which adjust and regulate rates on domestic traffic, and from 1887 to 1897 the Interstate Commerce Commission exercised this power. No injury to the railroads has been shown to have resulted from this supervision. On the contrary, during the ten years when rates were fixed by the Interstate Commerce Commission the railroads made a net profit of about 8 per cent. per annum, or 80 per cent. for the ten years, and added 35,000 miles of road. The protest made by the railroads against the passage of any legislation on this subject is based, not on their fear of ruin, but on their greed and desire to continue to reap ill gotten gain.

Mr. President, I will say here that if Congress had the power I would favor the creation of a commission of seven members, with full and final authority to fix rates and make such other rules and regulations as might be necessary to protect the shippers of the country. In my judgment such a commission, which should be composed of men learned in the law, of wide business experience, and knowledge of railroad affairs, would reach as nearly a just and impartial solution of railroad regulation as any tribunal to which the matter could be referred. It would have no interest, directly or indirectly, in the subject matter of cases coming before it, nor would its investigations be limited by technical rules of law. All of the facts, conditions and circumstances bearing upon the questions at issue could be gone into, and a judgment rendered which would meet the demands of justice and equity. I believe that such a commission would constitute a board of arbitration between the public and the railroads to which all their differences could be submitted and adjusted in the spirit of compromise to their mutual advantage. None of these advantages could be obtained by conferring jurisdiction upon the courts to adjust these matters. The judges would necessarily have only a theoretical knowledge of the questions brought before them, and would be bound in their judgments by a strict application of technical and sometimes harsh rules of law. What is needed at this juncture is common sense and good judgment, and not the mystifying and confusing distinctions of the law.

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I hope that the pending bill, with such amendments as may be required to perfect it, will become law, and that by it relief may be afforded to the people without real injury to the railroads. Delay in the passage of this legislation would, in my judgment, endanger the prospects of its ever becoming law. Another Congress or President might not so truly represent the people on this question. We ought, therefore, to make the best of a favorable opportunity to place upon our statute books a law which is signally in the interest of a majority of our people and in line with our plain duty.

Mr. Foraker, of Ohio, said:

The amendment to which I now call the attention of the Senate and which I shall offer, as I have already stated, as an additional provision to be attached at the end of this bill, is an amendment which provides an alternative remedy as against these evils. It provides, Mr. President, that when a complaint is made before the Interstate Commerce Commission, the shipper, if he be the complainant, or a community, if it be the complainant, may elect to proceed under this provision instead of under the provision of the Hepburn Bill, if we enact it into law.

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I introduced a bill at the beginning of the session which I thought did avoid all of them. I have become satisfied, however, that that bill, in the form in which I introduced it, can not possibly pass; that a rate making bill such as this is, or something like it, will pass and, having reached that conclusion, I have determined that instead of insisting upon my own bill as a substitute for the pending measure, I will offer

this amendment to be added to this bill. It is an amendment that is not in conflict with any provision of the bill. It is an amendment that amounts simply to a broadening and a strengthening of existing law. It is an amendment that not only avoids all these legal complications, but that avoids every question as to the practicability of the law. It is an amendment that involves, if we adopt it, the enactment of law that has already received the sanction of the Supreme Court of the United States, and about which, therefore, there can not possibly be any criticism as to its constitutionality, neither can there be—because experience has demonstrated it—any question as to its workability and entire practicability.

The amendment is merely of the third section of the Elkins law now in force. The amendment has been printed. If any Senator is enough interested to allow a page to hand him a copy of it, he will see at a glance just what is new matter; that it is very simple; that it is very easily understood. It is offered, as I said a moment ago, not to take the place of anything in this measure, but only to preserve and perfect in so far as we can the law now existing, the law in force, the law as to the efficiency of which men have testified without exception who have had to do with the regulation of interstate commerce; a law which the Interstate Commerce Commission has said in its official report is an excellent law, an efficient law; a law which every member of the Interstate Commerce Commission who was asked about it when he appeared before the Interstate Commerce Committee of the Senate testified was an excellent and efficient law and that it had accomplished great good.

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I was pointing out that in the House the framers of this bill, by the report, as they have informed us, have shown that they did not undertake to deal with any of these questions, except only whether or not rates were too high. They ignored everything else, and why did they ignore it? They ignored it because they found out that it would be impossible. In the first place, in my judgment, to deal satisfactorily in a measure of this kind with these other difficulties, and because, in the second place, they, too, by their proposition to enact this law without any reference to these other complaints paid tribute to the existing statutes.

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Mr. President, it seems to me, in view of our experience with this statute (the Elkins law), that with these amendments it will give a more certain, a more speedy, a less expensive and more efficient remedy than anything that has been suggested.

Why should this be at the expense of the Government, instead of at the expense of the shipper? For this reason: No shipper who is subjected to an unjust rate suffers alone; he is only one of a class. There may be hundreds, there may be thousands, of shippers who are prejudicially affected by that rate just as the complaining shipper is. The proceeding, therefore, should be in its nature a quasi-public proceeding on behalf of all who are interested. That kind of proceeding can not be entertained by the courts, unless we by statute so enact. Therefore I undertake to confer the power upon the court in such a case as that to entertain a bill setting forth that complaint and asking for relief against it. I have provided that that proceeding shall be not only in the name of the Government, but at the expense of the Government, and without any expense whatever to the shipper. The reason shippers have not had the relief which they should have had is largely due to the fact, Mr. President, that no shipper feels like going to law with a railroad for his antagonist, and he will not do so unless he have a grievous case that he can not well longer endure; but if you make his remedy easy, if you make it without expense to him, if you make it in the name of the Government, the very minute he makes a complaint and the Interstate Commerce Commission investigates that complaint and comes to the conclusion that there is probably ground for it, and then notifies the railroad company, the



railroad company, knowing that it is to be sued, not by a shipper but by the Government, without expense to the shipper and at the expense of the Government, will in every case, I think we may safely say, quickly adjust that difference with the shipper if it can possibly do so. No railroad would care to be prosecuted in that way if the complaint were a just one; they would resist only unjust complaints; and in that way we would get rid of much of the litigation that is talked about.

Now, according to the way I have proposed to amend this section, the Interstate Commerce Commission would entertain this complaint, and the shipper, when he files his complaint, will be given an option to say to the Interstate Commerce Commission, instead of proceeding under the Hepburn Bill—I will call it that for the sake of intelligently referring to it—and having a full hearing before the Commission and then going into the court under this broad review amendment, which it is insisted shall be put upon this bill, and which I think the probabilities are will be put upon it—the shipper will say: “Instead of proceeding before the Commission, and then proceeding again and doing it all over again in the court, I would rather have the Government take up my battle and fight it for me in the court in the first instance. I ask you, therefore, to send this to the Department of Justice, and have the proper district attorney bring the suit, and I will look on and make suggestions while the fight proceeds and the Government pays the bill.”

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Now, I want Senators to take this matter into consideration. I take it every man here wants to so legislate as to afford a remedy against the evils that have been complained of. Every man here knows that no remedy will be afforded if we pass an unconstitutional law. Every man here knows the law we have known as the “Elkins law” has been an efficient law in so far as it has been put to the test. Every man here knows that if we broaden the provisions of that law in the way I propose it will not conflict with this other legislation, and if other legislation about which we all must have apprehension as to its constitutionality should fail in the courts, we will then have a better law and then all this effort we are making will not have been in vain.

Mr. Bailey, of Texas, said:

At certain times and under certain circumstances it is entirely proper to speak of judicial power rather than of jurisdiction. When the fathers came to establish this Government and to divide it into legislative, executive and judicial departments, they aptly selected the term “judicial power” to describe the capacity of the new Government to hear and determine all of the cases and controversies subject to its decision. It is also true that ordinarily and correctly we use the term jurisdiction to describe the power which Congress has authorized the courts of its creation to exercise. In this sense, but only in this sense, there is a distinction between judicial power and jurisdiction.

What is judicial power? It has been so often defined by text writers and by the courts that it is our own fault if we permit ourselves to be confused about its meaning. The Senator from North Carolina (Mr. Overman) read to the Senate one of the clearest and most accurate definitions of judicial power that can be found in the books, but, instead of relying on it, I shall accept the definition proposed by the Senator from Wisconsin. The definition which he gives is taken from the work of Judge Miller upon the Constitution, and I do not think it subject to any fair objection.

Certainly the Senator from Wisconsin can not object because the passage which I intend to use is precisely the one which he has used, and I shall use it in exactly the same connection. In fact, sir, the Senator from Wisconsin prefaced his quotation from Judge Miller with the same question which I am now asking. “What,” said he, “is the judicial power of the Constitution?” Then he proceeds to answer his own question with the following quotation. Pretermittin that part of

it which is unnecessary and coming to the precise point which the Senator sought to emphasize, Judge Miller said:

“It—

The judicial power—

is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.”

This quotation from Judge Miller is not essentially different from the definition of all other respectable authorities. They all concur in saying that judicial power is the power to hear and decide, the power to pronounce a judgment and to carry that judgment into effect.

What is jurisdiction? “The power to hear and determine a cause is jurisdiction,” said the Supreme Court of the United States in the case of the United States v. Arredondo. Mr. Bailey, in his excellent work entitled “The Jurisdiction of the Courts,” defines it as—

“the power to hear and determine the subject matter in controversies between parties to a suit, and to adjudicate or exercise any judicial power over them. Bracton defines jurisdiction to be the authority to judge or declare the law between parties brought into the courts. It was said by Ryan, Chief Justice, in *Pierce*, 44 Wisconsin, that this definition has never been bettered and probably never would be, and is of universal authority.”

Bouvier, in his great work, which is accepted as authoritative by every court in the land, defines jurisdiction—

“to be the power to hear and determine a cause, the right of a judge to pronounce a sentence of the law on a case or suit brought before him acquired by or through due process of law.”

These are almost the same words in which Judge Miller defines judicial power, and there is absolutely no difference between them in principle or in effect. I could multiply these definitions until I had exhausted the patience of the Senate and they would all tend to establish that there is no distinction between the judicial power of the Government and the jurisdiction of its courts when those terms are considered with reference to a proposition like the one now before the Senate.

But, Mr. President, suppose I admit that there is a distinction between the judicial power of the Government and the jurisdiction of its courts even with respect to a question like the one under debate, that distinction, sir, so far from supporting the position of the Senators from Wisconsin and Pennsylvania, must produce upon any unbiased mind precisely the opposite effect. They describe the right of the Government to hear and determine disputes as to its judicial power, and they describe the jurisdiction of its courts as the right which Congress has conferred upon those courts to hear and determine certain cases. They confess that the court has no power to act in any given case until Congress has authorized it to do so, but they insist that when Congress has given a court the power to act at all, the Constitution then gives it the power to act beyond the limit of the law and up to the limit of the Constitution.

Let us see how much of force and justice there is in the argument that we are attacking the courts. A court is presumed to be learned in the law, and a man who is very learned in the law is seldom learned in any other specialty. I believe it was Lord Eldon who, when a friend inquired of him how he could make his ward a great lawyer, answered, in the language of Milton, “Teach him ‘to scorn delights and live laborious days.’” The observance of that rule has been found necessary from my Lord Eldon’s time to this in order to make a great lawyer; and no man ought to be made a judge until after he has made himself a great lawyer. Take one man of high character and great ability and put him on the bench, thus making it his duty to devote his days and nights to a study of the law. Then take another man of equal character and ability and put him on a railroad commission, and make it his duty to study railroad rates.

The judge will have many cases to try, a multitude of law books to read, and endless papers to examine. If all of that be well done he will have no time for an examination into the justice and fairness of railroad rates. The railroad commissioner, a man of character and ability equal to that of the judge—and if we can not get commissioners equal to some of the Federal judges I know, God save the Republic—will devote himself to the study of railroad rates, while the judge is pursuing through dusty volumes the light of the law. Who will be the best qualified at the end of ten years to fix a railroad rate—the judge, who the more he knows about the law the less he will be apt to know about the railroads, or the railroad commissioner, who has been studying railroad rates instead of law? It is certain that the judge would be best qualified to decide the law, and it is equally as certain that the commissioner would be best qualified to establish a railroad rate. I do not believe there is a Senator in this body—and I know there is not a Senator who ought to be a member of this body—who will contend that the judge would be better prepared than the commissioner for that work; but if there is anybody here who believes it, I want to warn him that there is nobody elsewhere who believes it. But notwithstanding the superior qualification of the commissioner over the judge for the task of fixing railroad rates, we recognize that under the Constitution the commissioner's work must at last be subject to the judge's scrutiny; and we only demand that the judge shall not be permitted to set aside without inquiry what the commissioner has done with infinite care and labor.

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My great regret is that I have not been able to agree with some lawyers in this body whose judgment upon a question of law I have been in the habit of receiving with perfect confidence. We go to the books for an answer to each other, and yet—and I say it in no spirit of flattery, Mr. President—I would as soon accept the deliberate, unbiased and matured opinion of the Senator from Wisconsin or the Senator from Pennsylvania as to accept the opinion of any text writer whom I have quoted here today. Knowing their great accomplishments and their great learning in their profession, it was a matter of profound surprise to me when I found that both had taken a position never before successfully maintained in Congress or before the courts.

The contention that Federal courts derive their powers from the Constitution is not a new one. It has been pressed upon our highest court by the ablest lawyers who have ever practiced before that great tribunal, but it has always been rejected. I am compelled to believe that Senators sometimes express opinions without due consideration, and then they hate to yield. I will not call it stubbornness, I am willing to call it intellectual firmness. You know, Mr. President, the difference between firmness and stubbornness is that our enemies describe the same quality as stubbornness which our friends describe as firmness. I am constrained to believe that the Senator from Wisconsin and the Senator from Pennsylvania, having committed themselves to this theory, are defending it with all the power they possess; and if any two men in the Senate or any two men at the American bar can successfully defend it, they can.

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And now if we could finish this matter with the concurrence of the Senator from Pennsylvania and the Senator from Wisconsin, I would feel like the millennium had almost come. I would feel that the railroad and the shipper could work together in peace and with a good will toward each other. I would feel that we could have a new national emblem, which would combine the pitchfork and the big stick. [Laughter.] I would look for a new day of justice instead of hate. I would feel that we were reaching an era in this devoted land where men are to be judged by how they act and what they think, rather than by what they have; when intellect and not fortune, when conduct more than birth should be the measure of our esteem, and when an honest fame should be the goal

toward which our ambitious youth should be taught to toil and hope.

Mr. Heyburn, of Idaho, said:

Mr. President, it is just as necessary that the shipper should have his day in court and that his constitutional rights should be observed as it is that the carrier should have his day in court.

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If the decision of the Commission is affirmed, it is true the shipper is just where he was. He is under the guardianship of the Commission. If the Commission has erred and the court sustains the contention of the transportation company and turns down the contention of the shipper, the shipper is just exactly where he was, suffering under the wrongs of which he complains.

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I ask again, Where and when does the shipper have his day in court, when the bill by its own terms provides that, having taken advantage of this measure, he may not again appeal to the court under the constitutional right which is inherent in him?

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The transportation company is not necessarily the enemy of the producer of commodity or the factor of commodity or the shipper of commodity. It is presumed that in the majority of cases the law of contract would be sufficient, but this proposed law is dealing only with those cases where the law of contract is not sufficient, because, if the law of contract were sufficient, there would be no complaint filed with the Interstate Commerce Commission.

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Congress could not, if it would, provide that a judgment might be rendered against any party that was not in court; and I have taken especial care in this amendment to limit the application of those words on the first page of the amendment—I call the Senator's attention to it—"when such complaining party has offered, or may offer, or may desire to offer for transportation by said common carrier any proper subject of interstate commerce." That limitation runs all through the amendment. I have not thought for a moment that a court could lay down a rule that would be binding upon a party not before it; but I do not believe, as a matter of practice, when the court makes a rule people will acquiesce in it, because they would know that it would be entirely futile and a source of expense to them to take up a case resting upon a principle that had already been determined by the court to again hear it. They could only possibly be induced to do it for the purpose of harassing some one, and they would get very tired of that by the time the court applied the rule that governs frivolous appeals.

\* \* \*

Of course, if both parties were satisfied with the decision of the arbitrator, there would be no occasion for going into court, but generally they are not. More than half of the cases decided in the last five years by the Interstate Commerce Commission were decided against the complainants. More than half of the formal complaints that were submitted to the Interstate Commerce Commission, upon which testimony was taken and hearings had, were decided against the producer, who sometimes is the shipper and sometimes is not the shipper. But for convenience of expression I speak of him as the shipper. Was he never right? Can it be possible that in so large a proportion of the controversies submitted by complaint to that body the shipper was never right? Does the record establish the infallibility of the judgment of the Interstate Commerce Commission to the extent that we can believe that those complaints were turned down because they had no merit? Out of twenty-seven cases that have been appealed from the Commission, the Commission has been turned down twenty times. It was right seven times out of twenty-seven.

Now I say that without any disrespect personally to the board. I say it because it is a fact which ought to be taken into consideration in determining the weight and the conclusiveness which we will attach to the decisions of the Commission in weighing the rights of those who make complaints before it. It is not a question of protecting either the Commission or the common carrier alone. They should both be protected within the limits of fairness and reason. But the primary object of the interstate commerce legislation was to protect the very party who was left out of the interstate commerce bill. He has been treated with suspicion from the very beginning. Section 9 of the existing law contains the provision that if the complainant elects to submit his case to the Interstate Commerce Commission, he does it at the jeopardy of waiving his rights under the common law to recover damages to the extent of his losses. Was ever such a provision incorporated in a bill that claimed to have been enacted for the protection of the shipper? Pass a law, ostensibly granting him some right to protection, and then say, "You can have this, but only in case you are willing to throw yourself with perfect faith and trust into the arms of the Commission for the ultimate decision of your rights," and then waive a right that was more valuable to him before the enactment of any law than any right that the law pretends to give him—the right to sue in the courts of the State or of the United States

to recover back any sums that had been unjustly collected from him by the transportation company.

\* \* \*

Mr. President, I suggest that the provision which I have submitted to the Senate for the review of the decision of the Interstate Commerce Commission is an absolute necessity; that if we send this legislation to the people without it they will condemn us and will say, "You have legislated for the other party. What have you done for us? You have spent weeks and months in construing the constitutional rights of the railroads. How much time have you spent in determining or considering the constitutional rights of property which the shipper or producer has, in the equal right with every other man, to the services of the common carrier?" That right is as much within the protection of the Fifth Amendment of the Constitution as is the right of the carrier to be compensated for services as carrier.

\* \* \*

I do not believe that the Interstate Commerce Commission is going to meet the expectation of the people in this matter. I do not believe that any department of the Government that has closed the doors, after a hearing, upon more than half of those who have applied for redress is going to meet the expectation of those in whose interest we are proposing to legislate, and I want in this hour to sound a word of warning, because it will come back to us.

## Favors the Creation of an Expert Court

ATTENTION has recently been called to the fact that none of the Interstate Commerce Commissioners has ever suggested that the power of the courts to review the orders of the Commission should be abridged in any way. In fact Commissioner Prouty is on record as advocating the creation of an expert court for this purpose.

### The Commissioners' Bill

The latest and most specific recommendation of the Interstate Commerce Commissioners is contained in their draft of a bill submitted to the Senate Committee on Interstate Commerce at the beginning of the present session of Congress. In that bill they ask Congress to provide that "any carrier may, within thirty days from the service upon it of any order, other than an order for the payment of money, begin in the Circuit Court of the United States for the district in which its principal operating office is situated, proceedings to set aside and vacate such order. \* \* \* Such proceedings shall be begun by filing on the equity side of the court a petition or bill in equity, which shall briefly state the matters embraced in such order and the particulars in which it is alleged to be unlawful, and in such proceedings the complainant and the Commission shall be made defendants."

There is no suggestion here as to the limitation of the jurisdiction of the court in any way or of any restriction on the powers of the court to issue a preliminary injunction or any other order. Further, the bill proposes to provide explicitly that "upon the filing of such a petition the Circuit Court may, upon such notice to the complainant and to the Commission as the court deems proper, extend the time within which such order shall take effect, not to exceed in all sixty

days from the date of service of the order upon the carrier." It also proposes to provide explicitly for the issuance of preliminary injunctions by the provision that "the court may also, if it plainly appears that the order is unlawful, and not otherwise, suspend the operation of the order during the pendency of the proceedings or until the further order of the court."

### Provisions as to Fines

Under this bill it is only in the event that no proceedings are taken to vacate an order within thirty days or that such proceedings are not successful that it becomes a "final order." The bill proposes the same heavy fine of \$5,000 for each offense for failure to put an order into effect and the same proceedings for the enforcement of an order, with the important difference that under the Commission bill the fine would not apply and the proceedings could not be commenced until the order had become "a final order" either by being acquiesced in by the carrier or by the failure of proceedings in the court to vacate it.

In the report of the Commission for 1904 legislation to empower the Commission to fix rates is recommended, and the Commission says that if its decision "is wrong—if it would deprive the carrier of property without due process of law or evade any of its other rights or privileges under the Constitution or laws of the United States—its operation could be enjoined, upon showing to that effect by the carrier, in a suitable and summary proceeding in the Federal Court." There is no suggestion here that the courts should be restricted to the protection of the carrier in its constitutional rights, but the suggestion is for the broadest possible review, for the protection of the carrier

in every right to which it might be entitled, and for a summary injunction for the protection of those rights.

Not only collectively, but individually, the members of the Commission have frequently gone on record in favor of broad judicial review, and of the exercise by the courts of the power of preliminary injunction.

### Chairman Knapp's Views

Chairman Knapp, when he was before the Senate Committee last spring, thought that the inquiry of the court of review ought not to be confined to the question of the reasonableness and lawfulness of the new rate ordered by the Commission, but ought to extend to the question of whether the Commission had erred in its condemnation of the original rate. In reply to a question by Senator Clapp, he said: "I anticipate that when a decision of the Commission is taken to court, under any scheme that you are considering, the vital question will be, Was the Commission right in its condemnation of the rate complained of?" Again he said: "The carrier which is unwilling to accept the adjudication and order of the Commission, and wishes to review that, should have the right to review the condemnation of the rate complained of as well as the rate put in substitution. It seems to me that is within the range of justice."

### Commissioner Prouty Heard

Commissioner Prouty, than whom there has been no more zealous advocate of extending the powers of the Commission, in his testimony before the Senate Committee said: "I have never advocated the exercise of that power (the power to make rates) by the Commission without the right of review." Further on, speaking of the character of the review, he said: "It seems to me that a court should presume in favor of a rate exactly what it presumes in favor of a statute. It should presume it is reasonable; but if it clearly appears to be unreasonable, it should set it aside, and should do that although the railroad is making 100 per cent. on its investment. From what I have seen of the operation of this right under the Fourteenth Amendment and the acts of State commissions, I have felt that it did not afford to the railroad the full measure of protection which it deserved, and I have advocated the creation of a special court, which should be an expert court, upon the theory that the court may exercise, if it were given the power to review the lawfulness of a rate, some additional power to what it could exercise under the Fourteenth Amendment."

Mr. Prouty indicated that he would shrink from the responsibility of exercising the rate making power under a law that did not provide for a broad judicial review, saying: "You may take any three judges in this land, I do not care who they are, and let them hear these questions from one year's end to the other, let them become familiar with every condition which surrounds the railway transportation of this country, and I will, as an Interstate Commerce Commissioner, prefer to be reviewed by a body of that sort than to

have the absolute power to make the rates without review, because I am conscious of the fact that I might make mistakes, and I think I might sometimes decide in favor of the public in that case where I would not in the other." Aside from the question of policy, Mr. Prouty did not believe that Congress could take away from the courts the right to suspend temporarily the enforcement of an order. In reply to a question by Senator Cullom as to whether he would have the rate take effect immediately, he said: "I do not think you can say anything about that. I think the court has an absolute right to decide and suspend any rate which any commission may make, and that you cannot help it. \* \* \* It seems to me that a rate ought to stand in abeyance long enough to permit a railroad company to take any steps it wanted to take."

### What Commissioner Fifer Said

Commissioner Fifer indicated that he was in harmony with his colleagues on this subject, though he barely touched on it. In discussing the question of how long an order made by the Commission should remain in effect, he said: "I think if you pass a law giving the Commission the right to condemn a rate when it is challenged, and the right to say what a reasonable rate is and put it into operation, and then fix a time when it shall go out, unless it is reviewed and reversed by some court—I would not cut that off—I think that would be sufficient elasticity."

Commissioner Clements, when he was before the House Committee, said he did not see any reason why the exercise of the rate making power by the Commission should not be subject "to any judicial review that is possible to be had under constitutional and legal methods." He can see no reason for any limitation whatever on the power of review, but would subject the Commission to "any judicial review that is possible to be had." No one in the Senate proposes to go farther than this.

### Commissioner Cockrell Explicit

Commissioner Cockrell, whose views might be expected to have even more weight with his former colleagues in the Senate than those of the other commissioners, was very explicit in his advocacy of the broadest kind of judicial review. When he was before the Senate Committee he said: "I would authorize the railroad, after the lapse of a reasonable time from the decision and order of the Commission, to go into the existing courts of the United States, if they desired to contest the ratings found by the Commission. The burden of proof would then be on them to show that the rate fixed by the Commission was not a reasonable and just rate, and in that case the court would have full jurisdiction to determine whether the rate first established by the railroads and declared to be unreasonable by the Commission was an unreasonable or unjust rate."



## State Railway Commissioners in Convention

**T**HE eighteenth annual convention of the National Association of Railway Commissioners was held at Washington, April 2-6. The convention was welcomed by Chairman Knapp, of the Interstate Commerce Commission, and the response was by Theodore B. Klein, Superintendent of the Bureau of Railways of Pennsylvania. On the first day of the convention the president, W. B. Smith, of South Dakota, delivered his annual address.

President Smith took the position that any law passed to correct the evils and abuses of a railway system must contain absolute rules for ascertaining what were reasonable and just rates. He also urged that there would be no utility in a law which did not provide for an appeal to the courts. He urged that there be efficient laws for the protection of the shippers and for the eradication of rebates and other forms of secret discriminations.

The address of the president received some adverse criticism by the members of the convention for the stand taken regarding the court review of the Commission's decisions. The committee to whom was referred the address reported on this feature as follows:

"Your committee desires to repeat and to emphasize the recommendations heretofore made by this association, and to urge the indorsement at this convention of such legislation as will so enlarge the powers of the Interstate Commerce Commission that it shall have authority to correct any rate regulation or practice in relation to the transportation of interstate commerce which may be found, after investigation, to be unreasonably or unjustly discriminatory, and to substitute a just and reasonable rate regulation or practice in lieu thereof, and that its orders in relation thereto shall become effective. Such legislation, however, shall carefully preserve to the carrier the protection by the courts of all its rights under the Constitution."

The following subjects were considered: Classification of operating and construction expenses of electric railways, grade crossings, railway taxes and plans for ascertaining fair valuation of railway property, amendments of act to regulate commerce, uniform classification and simplification of tariff sheets, railway statistics, legislation, safety appliances and block signals, delays attendant upon enforcing orders of railway commissions, rates and rate making, and powers, duties and work of State railway commissions.

The members of the association present were: Andrew F. Gates, chairman of the Railroad Commission of Connecticut, and William O. Seymour of the same commission; H. Warner Hill, chairman of the

Railroad Commission of Georgia; William L. Kilpatrick, secretary of the Railroad and Warehouse Commission of Illinois; Union B. Hunt, chairman of the Railroad Commission of Indiana; C. McCord, chairman, and McD. Ferguson and John E. Neumann, of the Railroad Commission of Kentucky; W. M. Barrow, secretary of the Railroad Commission of Louisiana. Railroad Commission of Maine, Joseph B. Peake (chairman), B. F. Chadbourne and Parker Spofford. Railroad Commission of Massachusetts, George W. Bishop. Railroad Commission of Michigan, Thoron W. Atwood, commissioner. Railroad and Warehouse Commission of Minnesota, Ira B. Mills, chairman; Charles F. Staples, William E. Young, A. C. Clausen, secretary; Thomas Yapp. Railroad and Warehouse Commission of Missouri, Joe P. Rice, chairman. New Hampshire Railroad Commission, George E. Bales. North Carolina Corporation Commission, Franklin McNeill, chairman; Sam L. Rogers, E. C. Beddingfield, and H. C. Brown, clerk. Railroad Commission of North Dakota, C. S. Deisem, president; John Christiansen, Erick Stafne and C. C. Hammond, secretary. Bureau of Railways of Pennsylvania, Isaac B. Brown, secretary of internal affairs; Theo. B. Klein, superintendent of Bureau of Railways, and W. W. Morgaridge, assistant superintendent of Bureau of Railways. Railroad Commission of South Carolina, J. H. Wharton, chairman; B. L. Caughman, J. H. Earle and D. P. Duncan, secretary. Railroad Commission of South Dakota, W. G. Smith. Railroad Commission of Washington, H. A. Fairchild, chairman; John S. McMillan, C. A. Snowden, secretary. Railroad Commission of Wisconsin, John Barnes, chairman, and B. H. Meyer. Association of American Railway Accounting Officers, J. O. Clifford and C. I. Sturgis. Street Railway Accounting Association of America, W. F. Ham. Interstate Commerce Commission, Martin A. Knapp, chairman; Judson C. Clements, commissioner; Charles A. Prouty, commissioner; Francis M. Cockrell, commissioner; Edward A. Moseley, secretary; Martin S. Decker, assistant secretary; Henry C. Adams, William H. Connolly, J. Collins, appointed by Governor of Montana; J. Kerney, appointed by Governor of Nebraska. Former members, John V. Smith, of Alabama, and J. H. Paddock, of Illinois.

The following officers were elected to serve for the next year: John S. McMillan, of Washington, president; C. C. McCord, of Kentucky, first vice-president; J. H. Wharton, of South Carolina, second vice-president; Edward A. Moseley, of Washington, secretary, and Martin S. Decker, of Washington, assistant secretary. The next meeting will be held in Seattle, July 27, 1907.

## FREIGHT

THE SHIPPERS' FORUM

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**W**E maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

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**W**HILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

**A Lesson to All Shippers** **T**UCKED away in a somewhat obscure corner of the July (1905) number of **FREIGHT** was a short item relating to the delivery of goods at stations having no agents. It read:

A case of interest to many shippers is that of *Nor-mile v. The Northern Pacific Railway Company*, recently decided by the Supreme Court of the State of Washington, in which the following rulings are made:

A carrier must place freight carried on platform cars to a station where it maintains a freight house, but no agent, in the house, to relieve itself from liability for freight lost through theft, unless it shows that it is not able to do so.

Written notice of the arrival of a consignment of freight need not be given to a consignee if he has actual notice thereof. Mailing notice of the arrival of the consignment of freight to the consignee at the place of its destination is sufficient.

Out in Toledo there is a keen, alert traffic manager. His company subscribes for **FREIGHT** and he reads it. If you will glance through the letters which follow you will be convinced, as we are, that he is "on the job":

*Freight Publishing Company, 116 Nassau Street, New York City:*

DEAR SIRs—For your information we herewith inclose copy letter, even date, to Mr. F. M. Kiley, Claim Agt. T. & O. C. Ry., city, and we believe that this copy will let you know what we think of your publication.

On Claim No. 882, the article mentioned aided us in securing a refund of \$8.73, and in this particular instance believe it will secure for us \$3.50, and after adding the two sums it will show you just what one publication was worth to us.

Yours very truly,

[Copy.] THE MILBURN WAGON COMPANY,  
EDWARD D. RYAN,  
Traffic Manager.

TOLEDO, Ohio, April 14, 1906.

*F. M. Kiley, C. A. T. & O. C. Ry., City:*

DEAR SIR—Acknowledging receipt of yours, April 13. T. & O. C. Claim 106896 and herewith, returning to you original papers, beg to also inclose copy of a clipping taken from **FREIGHT**, July, 1905, and per this clipping it is evident that the C. & O. Ry. at least are liable.

If the laws require that a carrier be required to put freight, loaded upon platform cars, into a freight house, surely same requirements apply upon our shipments loaded in box cars. Wish to say that when this copy of **FREIGHT** was received we had a claim upon our books and all lines interested, namely, T. St., L. & W., Ill. Ctl. and N. O. & N. E., refused to pay, claiming that they were not liable for delivery of shipments at a non-agency station, but on our presenting them with a copy of this clipping, claim was paid within 30 days afterwards.

In ordinary cases we would not expect the railway lines to pay claims for loss at such stations, but we have had so much trouble in regard to Sheridan, W. Va., that we cannot do otherwise but insist that claims for loss be paid. If you wish to know just how much trouble we have had as regards Sheridan, will be pleased to have you call upon us and we

will try and find some correspondence that we have had and show you that in making shipments to this point our profits upon same have been growing less, due to negligence on part of conductors on the C. & O. Ry, or other employes, or else there are a large number of dishonest persons located near Sheridan.

We certainly feel that at a non-agency station the railway lines should at least have some kind of a house where shipments could be placed and make arrangements with some persons close by to act as their representative, so that loss through theft would be prevented, and at the same time parties who are receiving shipments at such a point would not be discommoded in receiving same.

We ask you to refer this matter to Mr. Pauley, who we believe can give you some light about correspondence we have had in the past and trouble we have had in trying to straighten several matters. Please ask Mr. Pauley how about several pieces of wagon material he had kept in his office for several months and endeavored to straighten our mixups. We also wish to say that we have had some fifteen or twenty claims upon shipments to West Virginia, and in each and every instance either your line or the C. & O. Ry. paid them, but not until after we were put to considerable trouble in having them do so.

In this particular instance we insist that voucher be mailed us within 30 days.

Yours very truly,

THE MILBURN WAGON COMPANY,  
EDWARD D. RYAN,  
Traffic Manager.

TOLEDO, Ohio, April 14, 1906.

Mr. Ryan is traffic manager of one of the best known and largest wagon concerns in the United States. He is a busy man. Yet he finds time to read periodicals which he believes will improve his usefulness to his employers, and it is in evidence that he reads them intelligently. To such readers FREIGHT appeals. It is a pleasure to serve them and their interests.

Attention is called to this incident because it conveys a lesson to every shipper in the country. It emphasizes the necessity for a publication devoted to transportation matters and illustrates the importance of reading FREIGHT thoroughly. Our magazine is useful to every man or company shipping and receiving freight, not only because it records the transportation events of moment throughout the world, but because we have established and maintain an information bureau which answers promptly all legal or technical inquiries which any subscriber may make. Such information as we furnish, granting that it might be approximately as good if obtained from a lawyer, would cost from \$50 to \$500 in each case. We furnish it free to every subscriber. This is an age of specialists. There are few lawyers who have even a superficial knowledge of transportation subjects. From the practitioner who is unfamiliar with traffic procedure an opinion in an involved case is practically valueless. We violate no confidence when we state that FREIGHT's legal department is in the hands of men who know the subject from its initial to its final phase, and upon whose professional judgment the utmost reliance may implicitly be placed. Whenever you like, you may use it if you are a subscriber to FREIGHT.

### Existing Rates Preferable to Flat Rates

THE theory of equal mileage rates seems to linger somewhat in the public mind, notwithstanding the fact that for nearly a quarter of a century this theory has been discarded as inapplicable to rate making. Recently, Senator Tillman stated that he was in favor of a flat mileage basis, as it is in accordance with the Declaration of Independence. And Senator Bailey, replying to a question by Senator Foraker, said:

"Now, with the Senator's permission, I want to answer his inquiry whether a haul for 1,200 miles shall be charged three times the price of a haul for 400 miles. Of course, it costs the same to load and unload for a 400-mile haul as it does for a 1,200-mile haul; and, making that allowance, I say to the Senator, without the slightest hesitation, that I believe in a mileage basis. I do not believe the railroads of this country ought to be allowed to make things equal that God Almighty has made unequal. I do not believe that they ought to be allowed to put a product from one place to another place as cheap as the people who produce that product within a hundred miles are able to put it there as against competitors for a thousand miles."

It is safe to assert that there is not a writer of railway economics today who believes in equal mileage or flat mileage rates. The Interstate Commerce Commission, every State Commission, including the Texas Commission, and the courts, are in accord in rejecting a mileage basis for rates. Theoretically, the proposal may have much in its favor, but practically it is unworkable, and were it put into operation its application would not only disrupt present conditions, but prove a far greater hardship upon shippers and receivers than under the existing system, with all its inconsistencies and place discriminations.

In the first place, the cost of construction of lines of the same mileage is materially different. There are differences in the cost of operation depending upon the gradients and grades, and there are differences in the quantity and regularity of the traffic. Again, the mileage between competing centres varies: For example, the short line distance Chicago to New York is 912 miles; a route largely used is 1,300 miles. On an equal mileage basis—even allowing terminal cost—it is clear that the short line would receive all the traffic, or at least so large a portion of it that the other routes would have no business.

We unhesitatingly believe that, notwithstanding the anomalies, apparent inequalities and discriminations found under existing tariffs—the growth of a system which is complicated, but which has been molded as the result of economic and geographical conditions—existing rates are from any point of view preferable to flat rates.

FROM whatever distance or range, from whatever point of view, one cannot but be impressed with the Senate debate on rate regulation. As a whole, it has been marked by learning, grasp of the subject,

subtleties of the law; in short, it has been one of oratory—the object of which is to produce an effect upon the mind. One may not agree with one set of the principles or may distrust the efficiency of all of the plans proposed, yet he cannot resist the feeling that there is some truth in what each says. It may not be as weighty as its author thinks, yet it is persuasive.

On the highway to rate regulation the Senate has been the signboard of "Stop! Look! Listen!" The body itself has stopped to consider, looked ahead to possible breakers and listened to the decisions of the courts. The pause, based upon reason, prudence and logic, has caused the demagogues to seek shelter and the public to stop, look and listen—to stop and inquire whether they are informed, to look into conditions and to listen to reason.

May all stop long enough, look hard enough and listen zealously enough to settle the railway question right!

It has recently become the fashion of certain people and a certain class of the press to refer in general terms to Senators representing "special interests." What is meant by the term some think they know, for they keep on talking about this class.

### Concerning the "Railroad Senators"

When a tariff bill is up, the Senators who are pictured as unduly interested in some commodity are the target for slurs, if not actual condemnation. When a pure food bill is up, some representative of a canning section is certain to be singled out as the butt of indignation. And so, whatever measure is before the Senate, some member, or class of members, are paraded before the public as unduly opposed to the proposed legislation.

When a rate bill is up, it is so easy to refer to a class of Senators as "railroad Senators," the term is so euphonious that did one not stop to think he might believe that there was in reality such a genius. Lately it has become popular to class every member of the Upper House, who will not unhesitatingly cast his vote for the pending measure, as a "railroad Senator." Do those who are so eager to make such allegations stop and inquire who in the Senate are not thoroughly satisfied with the pending measure. To it there has been proposed over forty amendments by as many different men. In fact, the bill suits no one in the Senate—no, not even those who some time since advocated its passage. In the country it does not suit. The people only hope it will prove of value.

The Senate needs no justification. It is talented. It is able. It is conservative. It is honest. It will not knowingly make an error. It may err—but if it does we should remember that it is composed of human beings and is not infallible.

The real trouble is that the Senate has had cast upon it a bill wrong in principle. Thus far it has attempted to patch an unconstitutional measure,

Patched garments, aside from being ungainly in sight, are not durable. The Senate should discard the House bill—except its substantive portions—and starting from first principles weave a remedy in accordance with those principles which are the heritage of our race and written in our Constitution. Such action alone insures relief worth the name.

For months the press, and even the pulpit, and the House and Senate debates have proven to a marked degree the inadequacy of the English language to indicate one's meaning. The various decisions of the courts, both State and Federal, have been searched, and according to the views of he who produced them made his side of the case clear. Whenever and wherever has been found a syllable dealing

### The Handwriting Upon the Wall

with the rate situation it has been dragged forth and quoted in extenso. It is safe to say that the body of judge made law has now been bared. No undiscovered case or even dictum lurks in the sheep bound volumes. And yet the country thirsted for more; it was not satisfied. Men asked if a rate law about which there was uncertainty ought to be written upon the statute books and sent forth as a relief to the public; trusting to ingenuity of counsel and the logic of the legal lore to convince the courts of its constitutionality. It is not likely that the Senate will so shirk its duty. It never has in the past, and today it numbers as many able and conscientious men as ever sat in the chamber.

But while the country was in a maze of legal decisions, while newspaper reporters were commenting upon the limitations of Congress, while demagogues were doing the Sadducee and Pharisee act on the street corners and elsewhere, while a breathless and expectant public were wondering what grist would come from the legislative mill, while the railroads were rejoicing in a prospective statute—the Supreme Court whispered. It was the still small voice, a mere dictum, an interpretation of the law which was not directly presented in the case and even if stricken from the official opinion, it remains as the latest view of the greatest court in the world.

It deals with the power of Congress to delegate the duties which are imposed upon it. Said Mr. Justice Brewer in the Michigan Tax Cases, after admitting that there might be a question whether, if there be a clear delegation of legislative functions by a State Legislature to other departments, it would be void under the Constitution:

"In the nation no one of the three great departments can assume or be given the functions of another, for the Constitution distinctly grants to the President, Congress and the judiciary separately the executive, legislative and judicial powers of the nation.

"It may, therefore, be conceded that an attempted delegation by Congress to the President or any ministerial officer or board of power to fix a rate of taxa-



tion or exercise other legislative functions would be adjudged unconstitutional."

True, it is a dictum; a dictum is persuasive; it may be controlling; until overruled it is good law. But it must be borne in mind that this dictum is but a reiteration of what has been good law for generations. Previous decisions of high courts, opinions of learned writers and commentators are in accord with it.

Taken all in all, when all is said and done, the country is slowly, perhaps, but surely, arriving at the conclusion that Congress can but legislate, and, legislating, prescribe a rule of action and a means for compelling obedience to the rule by judicial machinery.

**A** CONSPICUOUS feature of the extraordinary response to the appeal for the relief of stricken San Francisco was the liberality of the railroads interested in California. Generally speaking, it is true that corporations have no souls. Therefore, when E. H. Harriman subscribed \$100,000 each for the Union Pacific and Southern Pacific railways, there was a gasp of amazement throughout the country, followed by absolute astonishment when it was stated that not only the Harriman, but other transcontinental lines would carry free all supplies and freight for the relief of the devastated city. A conservative estimate of the cost of this service to the railroads is \$3,000,000, a munificence more than regal. Furthermore, it was all done within twenty-four hours after the extent of the disaster became known, and it is recalled that "he gives twice who gives quickly."

Let us excoriate the railroads when they give us the "dinky dink," but when they give us such a magnificent illustration of their public spirit as they did in the San Francisco crisis, no measure of commendation should be withheld from them.

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**DODGE MANUFACTURING COMPANY,**  
M. W. Mix, President.

Mishawaka, Ind., April 9, 1906.

#### BOOKS AND PERIODICALS

*The Heart of the Railroad Problem.* Parsons. Little, Brown & Co.

The reader of this work has in store for him several surprises. He will be surprised that the author has collected from the reports of and testimony before the Interstate Commerce Commission, the Industrial Commission, the press and magazine articles, so many hundred cases of what the author terms "discriminations." Each bit of testimony or statement by an author he takes at its face value. He will be surprised

that, as the author is a well known advocate of governmental ownership, he does not find more advocacy of that plan. He will be surprised also, that the author proposes no distinct remedy for the correction of those abuses which he mentioned; nor does he, though a lawyer, consider the legal aspect of governmental regulation and control of railway rates and practices.

The author is to be commended for his fearlessness. He strikes from the shoulder, uses names and what purports to be facts, in a cold blooded way. No officer, nobody, escapes the scathing pen of the author. The Supreme Court of the United States is taken to task for focusing its attention upon a particular part of a statute instead of aiming to enforce the act according to its clear purpose and intent (p. 85). The Interstate Commerce Law has shown its deficiency in accomplishing the remedies for which it was designed (pp. 104, 108). The Interstate Commerce Commission does not escape, for there is quoted, with apparent approval, a portion of testimony by which it appears that the Commission had nursed papers showing rebates for a year (p. 145); and also, the author states that the Commission has shown too strong a tendency to insist that a town or city is entitled to the benefits of its geographical position; the decision in the Milk Case receives the usual condemnation. We are inclined to think, with respect to the condemnation of the Milk Case, that the author did not make an exhaustive investigation, but, on the contrary, has followed the opinions and beliefs of other writers; it is a well known fact that upon the rendition of the decision in the Milk Case the carriers interested and those who made the complaint, congratulated the Commission upon the righteousness of the opinion. Even the members of the Commission are not immune to the criticism of the author, who quotes with approval the words of some unknown person, and making a dig at the President, states:

"Even President Roosevelt did not appoint for fitness. When a vacancy occurred he did not look for the best man fitted to serve on such a Commission, but appointed Senator Cockrell, of Missouri, a nice old man of seventy, that everybody liked, but without any special qualification for the work. The election went to the Republicans in Missouri, so Cockrell couldn't go back to the Senate. He has many friends. The Senators all like him, Republicans as well as Democrats, and they said to Roosevelt: 'You must do something for Cockrell; here's a Democratic vacancy on the Interstate Commission, put him in there,' and Roosevelt put him in."

That there is great railroad representation in the Senate we must learn from the following language: "The railroads have the Senate, and the Senate must confirm all nominations to the Interstate Commission" (p. 289), and in a paragraph later, we again hear of the "railroad representation" in the Senate (p. 290).

"The Heart of the Railroad Problem," according to the author—and we are inclined to think he is correct—"lies in a question of impartial treatment of ship-

pers." and "favoritism is shown for large shippers or special interests having control of railways or a special pull with the management" (p. 5). This heart is part of the railroad systems of the United States, which are "unique in two respects—the efficiency of the service they render and the extent and viciousness of the discriminations they make" (p. 308).

When one comes to consider the arteries—more properly veins—veins filled with impure blood, veins which lead to this heart, one finds an excellent list of sixty forms of discriminations. These have existed, according to the author, from various times, and many are in existence and operation today. One can but wonder why some of these abuses have not been abolished. Can it be the lack of enforcement of existing laws? Or are the substantive and remedial portions of the act entirely unable to afford a corrective remedy? The author gives credit to the Elkins Bill, but in the same breath admits that rebates exist and that there are no prosecutions of any consequence under the act of February 19, 1903. According to the author the cause of these several discriminations is partly because the railways wish to do so and partly because they have to (p. 2). The purpose of the discriminations the author divides into six or eight heads, and are as follows: "(1) To keep business from going to a competing line; (2) to increase revenue by creating new business, for which, if necessary, rates may be dropped very low, as anything above the cost of handling new business will add to income; (3) to simplify and solidify traffic; (4) to favor persons who, through political influence or other power, may aid or injure the road, or who, through friendship, marriage, business or civic relation, or otherwise, have a 'pull' with the management; (5) to advance the interests or enhance the value of a business, or property, or place, in which the railway or its officers or their friends are interested; or (6) to kill or injure a place or person or business that has incurred the enmity of the railways or their allies." Notwithstanding these discriminations, "law after law has been passed to prevent unjust discriminations, and yet, in spite of the contrary statements of some witnesses, it is perfectly clear that they have not ceased, that comparatively little has been done in that direction" (p. 236). These discriminations are difficult to enforce, "because of the strong interests that call for it, the secrecy of many of its forms, the reluctance of shippers to make complaints for fear of persecution, and the resistance offered by railway officers to efforts to get at the facts, leaving the country during an investigation, refusing to answer truthfully on the witness stand, burning books and papers that might reveal the facts to courts or other investigating bodies, or enable the officers to refresh their memories so as to be able to answer questions."

The book shows, in some respects, haste in preparation. The appendix advises the reader of the present status of the Chesapeake & Ohio and New York, New Haven & Hartford coal contract, entered into in 1896

(pp. 64, 335), but the reader is left in the air concerning the decision in the California Orange Routing Case (p. 160), notwithstanding the fact that the Supreme Court rendered its decision in this case but one week later than it did in the case just mentioned. The case of the unreasonable discrimination against wagon loaders of coal is mentioned (p. 140), but the reader is not told that, in an identical case, the Commission held that when the Pennsylvania Railroad made similar orders against wagon loaders, it was not a discrimination. (*Thompson v. The Railroad*, 10 I. C. C. 640.) As citation of decisions is frequent, it is to be regretted that the author omitted the citation for the decision of the Circuit Court of Appeals in the Kingwood Coal Company Case (p. 161). It cannot be divined how the text concerning private switching is supported by the decision of page 163.

That the author takes at face value any statement—made upon the stand, in a letter, or on the pages of a yellow journal—can be seen from his reference to the fact that grain billed "for export" and taking a less rate than domestic, is used for domestic purposes. It is true that testimony was given before the Industrial Commission, but the testimony of Mr. Vanlandingham, in 1899, related to grain from Missouri River points to Chicago, and if there was any fraud in the transaction to which he referred, it was a fraud perpetrated by the trunk lines upon their Western connections. The contention of the author is broad and his statement has been frequently denied by railway traffic managers under oath. The statement "for the first ten years after the Interstate Commerce Act was passed no railroad denied the right of the Commission to fix rates, and the Commission says it was supposed they possessed the power" (p. 274) is not borne out by the facts. Soon after the passage of the law the Circuit Court of the United States denied the right of the Commission to make rates for the future. Also, the Commission itself, by one of its members, as early as 1887, denied the right of the power of the Commission to make rates. In 1889, *K. & I. B. Co. v. L. & N. R. R. Co.*, 37 Fed. 567; again in 1889, *I. C. C. v. B. & O. R. R. Co.*, 43 Fed. 37. The Lehigh Valley Railroad Company, in a proceeding brought against it in 1891, denied the right absolutely. The report of the Commission for the year 1891 stated that some carriers denied the right of the Commission to make rates for the future.

On June 15, 1887, in an opinion by Commissioner Cooley, it was said:

"The Commission would, in effect, be required to act as rate makers for all the roads, and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This in any considerable State would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman, and the construction of the statute which would require its performance would render the due administration of the law altogether impracticable, and

that fact tends strongly to show that such a construction could not have been intended." (In re L. & N. Co., 1 I. C. C. 56.)

In July, 1887, in deciding the case of Thatcher v. D. & H. C. Co. et al. (1 I. C. C. 152-156), the Commission said:

"It is, therefore, impossible to fix them (rates) in this case, even if the Commission had power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute."

An authority on transportation, Aldace F. Walker, one of the Commission (1887-1888), in an article in *The Independent* of July 1, 1893, said:

"The Interstate Commerce Commission at first disclaimed power to make rates generally under the law, but has since inferred from the present statute that Congress intended to confer power upon that body to establish maximum reasonable rates upon all interstate traffic."

He flounders considerably concerning a solution for the abuses. At one place he proposes arbitration, wherein would be represented labor, capital and the public (p. 300); again heartily favoring the Hepburn bill (p. 264). The real remedy, however, independent of the experience of foreign countries (on this subject the author disagrees with many others)—the real remedy is to have the carriers operated by the Government. Governmental operation under good political conditions and reasonable safeguards would result in lower rates, the abolition of abuses and freight concessions (p. 311).

"If the railways were united into a national system under a great leader like James J. Hill, or A. J. Cassatt, free to operate the roads on business principles, untrammelled by the spoils system or any political control, backed by a public interest that would not tolerate favoritism, partyism, political influence or graft in any form, working with public aims and public motives instead of private aims and motives, managing the roads for the whole people as stockholders instead of for a small part of the whole people as stockholders, paid, in common with the whole body of employees, on the basis of a fixed remuneration plus an additional compensation proportioned to efficiency, and in constant consultation with local and national councils representing commercial, manufacturing, mining, labor and agricultural organizations and interests, we should have a railway system and management whose efficiency would astonish the world, whose methods would bear the light, and whose administration would be an honor to twentieth century civilization.

If the author had considered more of the law relating to governmental control of common carriers, and had considered in detail the efficiency and advantages of court proceedings, he would have doubtless arrived at a different conclusion. "The long delays and great expense" (p. 285) in the courts are not existent when one considers any of the recent court proceedings, for they prove conclusively that the courts handle matters in far less time and arrive at final judgment quicker than it takes the Commission to start its own machinery.

## CARRIAGE COMPANIES TAKE ACTION

A meeting was held April 20 of the various carriage companies of Watertown, N. Y., called to consider the raise in freight rates on carriages shipped from Watertown, put in force by the New York Central on January 1. An association was organized, and W. W. Conde, of the Union Carriage & Gear Company, was chosen president, and W. R. Tassey, of the H. H. Babcock Company, secretary. John M. Carpenter, of the Excelsior Carriage Company; George G. Babcock, of the H. H. Babcock Company; W. J. Mills, of the Watertown Carriage Company, and Charles E. Brown, of the Union Carriage & Gear Company, were present.

The change in rates considered was effected by a circular issued by the New York Central Railroad on December 26, modifying a circular which had been in force since 1893.

Many freight bills for carriages shipped from other points in New York State since January 1 were presented at this meeting, showing that at such other places manufacturers are still enjoying the privileges of the schedule in force down to December 26 last. This works a distinct discrimination of from 25 to 40 per cent. in freight rates against Watertown manufacturers.

Individual manufacturers have been in constant communication with F. L. Wilson, division freight superintendent of the R., W. & O., and with their New York offices, since January 1, to secure, if possible, a correction of the injustice, but up to this time without success.

As the principal shipments in the wagon trade are made in the next sixty days, and purchasers in distant States are often determined in their choice by the freight rate, it was determined to take immediate and urgent action. After a full consideration and discussion of the subject, a motion was made and unanimously carried to employ Brown, Carlisle & McCartin as counsel, to take up the matter in behalf of the association with the New York Central authorities, and to report at an adjourned meeting.

As this is a matter that concerns the welfare of one of the largest industries of Watertown, it is hoped that the railroad officials will appreciate the fact that it is a matter of common interest to manufacturers, shippers and the community, and correct what threatens to be a serious menace to their prosperity.

The representatives of all the carriage companies concerned declare that, unless the inequality is corrected, it will be impossible for them to continue in competition with other manufacturers.

## Perplexing Bill of Lading Situation

THE situation in regard to the uniform bill of lading is perplexing, if not mysterious. When there are meetings of the shippers and carriers nothing is given out of the proceedings. There was a meeting during the month, and it is said that the committee are agreed upon all points except upon the so called riot clause. It is said that the shippers wish to make the carriers responsible for damage and loss occasioned by riots, while the carriers insist that they ought not, in fairness, be bound by losses due to such causes. As nearly a year has passed since there was an agreement to attempt to agree, it is to be hoped that some report, preliminary or final, will be given out to the thousands of waiting shippers who are asking daily for results.

### Points Desired by Bankers

At the March meeting of the Committee on Interstate Commerce of the House, the bankers' committee appeared and advocated the passage of the Townsend bill (H. R. 15846). William Ingle, of Baltimore, stated the following as the four principal points which the bankers desired:

(1) That the bills of lading issued by carriers should be given the quality of negotiability, being made negotiable by indorsement and delivered in the same manner as are negotiable instruments for the payment of money. (2) That the papers should be made out after a uniform formula and should contain the words "to the order of" in print. (3) That alterations in any bill of lading be made ineffective as against the operation of the bill of lading itself as made out in accordance with the proposed law. (4) That provision should be made whereby a bank accepting a bill of lading should not be legally obligated to warrant the soundness of the goods.

### Weak Points of the Present Bill

For the bankers, Thomas B. Peyton, of New York, spoke from the legal point of view. After referring to the amount of money loaned on bills of lading as collateral, which he estimated at twenty billions of dollars per year, he stated that there was an absolute necessity for proper legislation regarding the contract of carriage. The weak points in the present bill of lading he stated as:

First, that there was no requirement that the carrier take up the bill before surrendering the goods. This allowed dishonest men to get their goods without paying the bank. In this case the courts have held that the bill was worthless. Secondly, straight bills not intended for negotiation were issued without the words "order of." Holders were in the habit of writing these words in and negotiating the bill. Thirdly, present bills are carelessly drawn, and are susceptible of all kinds of alteration. The law provides that any material alteration makes the instrument void. The courts have held that changes of date constitute a material

alteration. Fourth, freight agents often issue fraudulent bills of lading. Some States have held that the action of agents in this way did not bind the carrier, although New York courts have held the reverse.

### Bankers Leave the Field

The hearing was adjourned to April 24. On that date, at the request of the bankers' committee, the matter was indefinitely postponed. No reasons for the request have been given, and why the bankers, who have been so zealous to secure a bill of lading which will be fair to those who loan on them as well as to the borrowers, have left the field is not known.

W. H. Chandler, traffic manager for Francis H. Leggett & Co., has addressed a letter to John M. Glenn, secretary of the joint committee of shippers and carriers, which will be printed in the next issue of **FREIGHT**.

Here is the personnel of the joint committee of shippers and carriers:

Acting for the railroads—Messrs. F. J. Firth, chairman uniform bill of lading committee; D. B. Caldwell, vice president Delaware, Lackawanna & Western Railroad; E. L. Somers, freight traffic manager New York, New Haven & Hartford Railroad; D. T. McCabe, freight traffic manager Pennsylvania lines West; B. B. Mitchell, general freight traffic manager Michigan Central Railroad.

The shippers' representatives—Messrs. John E. Wilder, Wilder & Co., Chicago; B. A. Eckhart, Eckhart & Swan Milling Company, Chicago; F. T. Bentley, Illinois Steel Company, Chicago; A. J. Toomey, Toomey Bros., New York, and O. P. Gothlin, National Cash Register Company, Dayton, Ohio.

### Mr. England's Points

On behalf of the Grain Dealers' National Association and the National Hay Association, Charles England, of Baltimore, has written to the Committee on Interstate Commerce of the House, suggesting that the following points be covered in an act relating to bills of lading:

That "order" bills of lading be safeguarded to prevent forgery; that the bill of lading be uniform and provide for all interstate shipments; that it contain well defined and clear conditions, which shall not, however, permit the carrier to exempt itself from the loss or damage arising from its own negligence or that of its officers, agents and employees; that the shipper be allowed to demand a bill of lading and an "order" bill of lading; that an "order" bill of lading shall be taken up before the property is delivered, but that, in the event of partial delivery, such delivery shall be indorsed thereon; that the consignee shall have the right to inspect the goods without the surrender of the bill of lading; that "order" bills of lading shall be negotiable instruments and muniments of title; "order" bills



of lading shall vest in each and every bona fide holder for value unaffected by any prior equities, unless he have notice; if an "order" bill of lading contain the name of the party to be notified, such words shall not be construed as to charge any bona fide holder with notice of equities of such "notify" party; that a bill of lading shall have been issued when it shall have been delivered out of the hands of the carriers or its agents; that "order" bill of lading shall be conclusive evidence in the hands of a bona fide holder that all goods mentioned therein have been delivered to and received by the carrier; giving to the shipper the right to route his freight; the bill to be in such forms that the shipper will not be called upon to assent to the reasonableness of the rate charged; that upon the loss or damage to the property, any one or all of the carriers shall be held liable for such loss or damage; that no charge be made for issuing bills of lading; provisions be made for the punishment of parties who fail to surrender "order" bills of lading, who refuse to issue same, who refuse to allow shipper to route freight; live stock, from the inherent nature of it to damage, to be shipped "released" in much the same way as now; special bills of lading for explosives; that there be but one class of "service."

## PROCEEDINGS UNDER THE ELKINS LAW

*To the Editor of Freight:*

SIR—Can you advise me the proceedings which have been instituted under the Elkins law?

J. G. WEST.

ST. PAUL, Minn., April 25, 1906.

The proceedings under the Elkins law are as follows: Fifteen injunctions to injoin departures from published rates, twenty-one indictments for violation of the act; three indictments for conspiracy to violate the act.

The decisions of the courts upon this law are as follows: U. S. v. Mich. Cent. R. Co., 122 Fed. 544; W. Va. N. R. Co. v. U. S., 134 Fed. 198; I. C. C. v. C. & O. R. Co., 128 Fed. 69, — U. S. —; Mo. Pac. R. Co. v. U. S., 189 U. S. 274; U. S. v. A., T. & S. F. R. Co. — Fed. — (Judge Phillips).

Proceedings in the courts under the Elkins law:

### 1—DECISIONS.

U. S. v. Mich. Cent. R. Co., 122 F. R. 544.  
W. Va. N. R. Co. v. U. S., 134 F. R. 198.  
I. C. C. v. C. & O. R. Co., 128 F. R. 69, — U. S. —  
Mo. Pac. R. Co. v. U. S., 189 U. S. 274.  
U. S. v. A., T. & S. F. R. Co., — F. R. — (Judge Phillips).

### 2—INJUNCTIONS TO INJOIN DEPARTURES FROM RATES.

U. S. v. C. & N. W. R. Co.  
U. S. v. Ill. C. R. Co.  
U. S. v. Mich. Cent. R. Co. (see decisions).  
U. S. v. Pa. Co.  
U. S. v. P., C., C. & St. L. R. Co.  
U. S. v. L. S. & M. S. R. Co.  
U. S. v. Wab. R. Co.  
U. S. v. A., T. & S. F. R. Co. (see decisions).

U. S. v. C., R. I. & P. R. Co.  
U. S. v. C., M. & St. P. R. Co.  
U. S. v. C. & A. R. Co.  
U. S. v. C. G. W. R. Co.  
U. S. v. Mo. Pac. R. Co.  
I. C. C. v. C. & O. R. Co. (see decisions).  
U. S. v. C., B. & Q. R. Co.

### 3—INDICTMENTS.

U. S. v. Zorn, Williams & Bushfield.  
U. S. v. C., B. & Q. R. Co.  
U. S. v. Swift & Co.  
U. S. v. Armour Packing Co.  
U. S. v. C. & A. R. Co.  
U. S. v. C., M. & St. P. R. Co.  
U. S. v. Cudahy P. Co.  
U. S. v. Faithorn, Wann and C. & A. R. Co.  
U. S. v. Nelson Morris & Co.  
U. S. v. Kreskap.  
U. S. v. C., B. & Q. R. Co. and Miller & Burnham.  
U. S. v. G. N. R. Co. and Campbell.  
U. S. v. R. J. Wood & Co.  
U. S. v. Mutual Transit Co. (1).  
U. S. v. Lide & Diver.  
U. S. v. Mutual Transit Co. (2).  
U. S. v. Diver.  
U. S. v. Suffolk & C. R. Co. and Bosley.  
U. S. v. Gay Mfg. Co.  
U. S. v. N. Y. C. & H. R. Co.  
U. S. v. Del. & H. Co.

### 4—INDICTMENTS FOR CONSPIRACY TO VIOLATE.

U. S. v. Thomas & Taggart.  
U. S. v. Crosby, Thomas & Taggart.  
U. S. v. Swartzchild & Sulzberger Co.

## UNIFORM CLASSIFICATION WANTED

Agitation for a uniform classification of freight for the whole United States has been started again at Chicago. There are at present four classifications in use in different parts of the country, which differ widely in the matter of rates which apply to the same articles, and this difference is the cause of a great deal of trouble and annoyance to both shippers and railroads.

It has been found by Chicago shippers that, owing to the fact that both the Official and Western Classifications apply in the territory between Chicago and the Mississippi River, and the classifications being so wide apart in certain respects, merchants and manufacturers east of Chicago have a considerable advantage in sending their goods to the markets on the Mississippi and intermediate territory. Specific instances of this sort have been brought to the attention of the railroads by the transportation committee of the Chicago Commercial Association, with a request that they be rectified. Railroad men declare correction is impossible unless a uniform classification is adopted.

**If you don't read FREIGHT regularly, you're handicapped in your business.**

## Proposed Amendments to the Hepburn Bill

THE chief amendments proposed to the Hepburn Bill, dealing with the amount of court review, are those introduced by Senators Knox, Overman, Bailey, Long and Simmons.

The amendment of Senator Knox provides: "That the orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time as shall be prescribed by the Commission, and shall continue for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless sooner set aside by the Commission or suspended or set aside by order of a court in a suit to test the lawfulness of said order; but any carrier, person or corporation party to the proceedings affected by the decision of the Commission as to the rate or practice covered by the complaint, or by its order prescribing a different rate or practice and alleging either or both to be a violation of its or his rights, may institute proceedings against the complainant and the Interstate Commerce Commission, in the Circuit Court of the United States for the district in which any portion of the line of the carrier or carriers that were parties to the complaint may be located, sitting as a court of equity, to have such questions determined, but in no other way shall the lawfulness of such order be questioned, and in all such proceedings the court shall have power to make orders to secure the appearance of parties from any part of the United States, and the existing laws relative to evidence and to proceedings under the acts to regulate commerce shall be applicable. Provided, however,

"That no order of the Commission reducing a rate shall be set aside or suspended by an interlocutory decree of the court without requiring a deposit of the excess charge or sufficient bond to secure to the parties entitled thereto the repayment, if the Commission's order is sustained, of all moneys received by the carrier in excess of the rate fixed by the Commission, and the court shall determine in such interlocutory decree what practices shall be pursued by the parties pending the litigation in order to make this right of repayment certain and effective."

The amendment of Senator Overman reads: "But no writ of injunction or interlocutory order shall be granted by any district or circuit court without first giving five days' notice to the adverse party, or his attorney, of the time and place of moving for the same, nor until petition and answer are filed and hearing thereon is had."

The amendment of Senator Bailey reads: "That no rate or charge, regulation or practice prescribed by the Commission shall be set aside or suspended by any preliminary or interlocutory decree or order of the court. Said proceedings shall have precedence over all other cases on the docket of a different character, and the court shall have power to make orders to secure the attendance of persons from any part of the United States, and the existing laws relative to evidence and

proceedings under the acts to regulate commerce shall be applicable. Either party to said proceeding shall have the right to appeal directly to the Supreme Court of the United States, and such appeal shall have precedence in said Supreme Court over all other cases of a different character pending therein."

The amendment of Senator Long, sometimes referred to as the White House amendment, reads: "That all orders of the Commission, except for the payment of money, shall take effect within such reasonable time as shall be prescribed by the Commission, and shall continue for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless sooner set aside by the Commission, or suspended or set aside in a suit brought against the Commission in the Circuit Court of the United States, sitting as a court of equity, for the district wherein any carrier plaintiff in said suit has its principal operating office, and jurisdiction is hereby conferred on the Circuit Courts of the United States to hear and determine in any such suit whether the order complained of was beyond the authority of the Commission or in violation of the rights of the carriers secured by the Constitution."

The amendment of Senator Simmons reads: "That any shipper or carrier being a party to a proceeding under Section four of this Act may, within fifteen days after notice of an order by the Commission prescribing a rate or rates, and not afterward, apply by an appropriate proceeding in equity to any Circuit Court of the United States of competent jurisdiction under existing law for an order to restrain the enforcement of such rate or rates upon complaint and affidavit, which shall be accompanied with a certified copy of the proceedings, together with the evidence had before the Commission, setting forth the day when said rate or rates will go into effect, and alleging that, unless the enforcement of said rate or rates is restrained, his or its property will be taken without just compensation. Upon the filing of this application the court shall issue a notice or summons to the Commission, returnable before said court at chambers, to appear within ten days and answer said application. If said shipper or carrier shall desire to apply for a preliminary or interlocutory order to suspend said rate or rates until final decree, he or it shall, upon the return of said summons or notice, file a written notice to that effect, and either said shipper, carrier or the Commission may, within ten days thereafter, submit to the court, upon affidavit or otherwise, as the court may direct, such additional evidence as they may desire to offer, and thereupon the court, upon consideration of said additional evidence, together with the order, proceedings and evidence made and taken by and before the Commission, which shall be taken as *prima facie* establishing the fact that said rate or rates are just and reasonable, proceed to pass upon and decide said application, granting or refusing the same."

## Extensions to the Allis-Chalmers Works

THE new extensions to the West Allis, Milwaukee works of the Allis-Chalmers Company, which, when completed, will add 861,000 square feet to the plant's present floor area of 652,000 square feet, and make the entire plant capable of affording employment to 11,000 persons, will place the West Allis works among the large industrial plants of the country. The extended works, together with the capacities of the other works of the company in Milwaukee, Chicago, Cincinnati and Scranton, will be capable of affording employment to a total of approximately 18,000 persons.

### Equipment

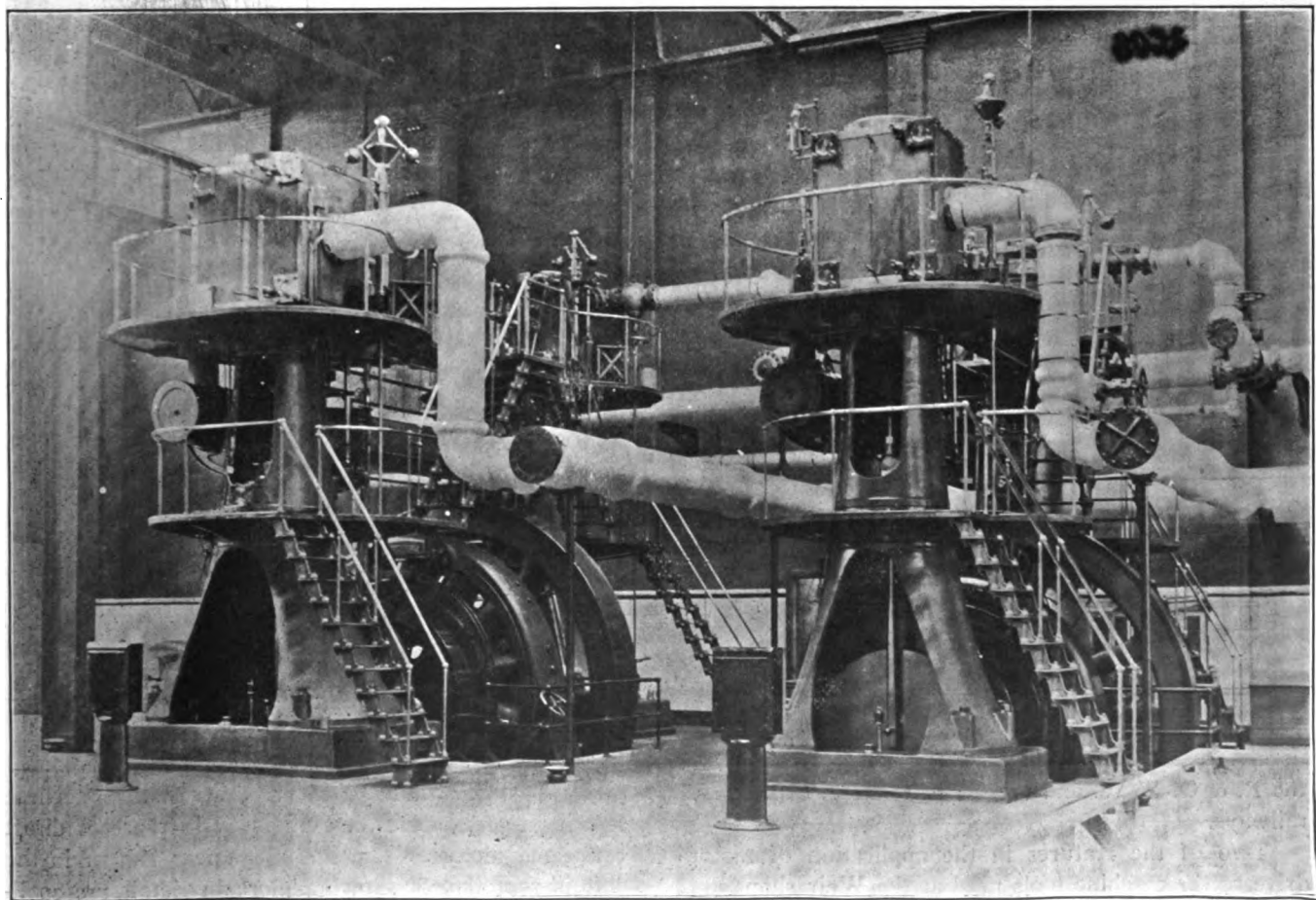
The existing power house occupies about a third of unit No. 3, at the west end and adjoining the blacksmith shop. The engine room at the present time holds an equipment of three Allis-Chalmers engines, as follows: One 23-in. and 36-in. x 42-in. Reynolds vertical, cross compound, direct coupled to a 550 K. W., 250 volt, direct current generator; one 18-in. and 28-in. x 42-in. engine of similar type, direct coupled to a 300 K. W., 250 volt, direct current generator, and one Reynolds vertical engine, 18 in. x 24 in. direct connected to a 100 K. W. direct current

generator, 250 volts, together with a horizontal, two cylinder tandem Nürnberg gas engine of the four cycle, double acting type, driving a 150 K. W. direct connected D. C. generator. Also a cross compound, two stage Allis-Chalmers air compressor, with a capacity of 1,000 feet of free air per minute, supplying at a pressure of 100 lbs. to the inch for use in pneumatic tools and air hoists in the works and for air lifts in the artesian wells.

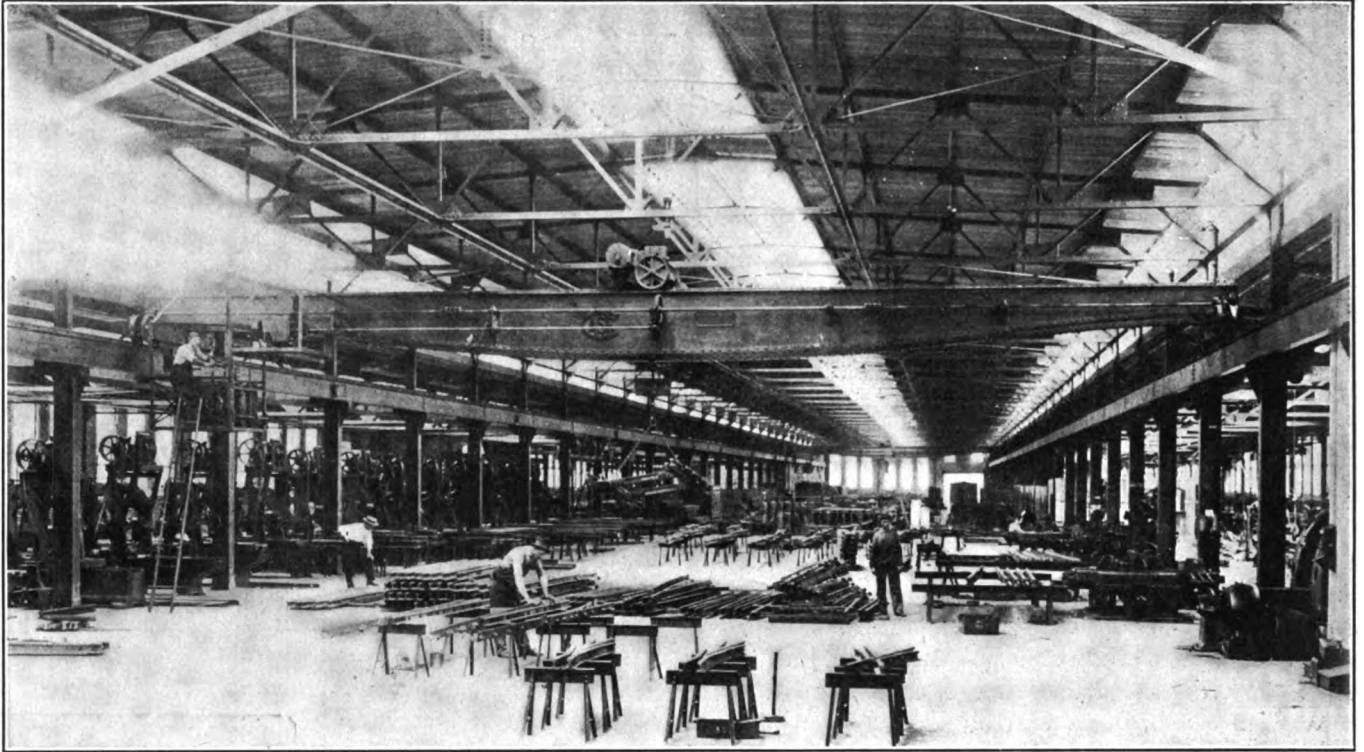
The new equipment for furnishing power to the works extensions consists of one 34-in. and 54-in. x 42-in. Reynolds vertical, cross compound engine, direct connected to a 1,000 K. W. Bullock direct current generator, and an Allis-Chalmers cross compound air compressor, with air cylinder 18 in. and 30 in., steam cylinder 18 in. and 30 in., and a 42-in. stroke.

### Modern Methods in Manufacturing Railroad Frogs

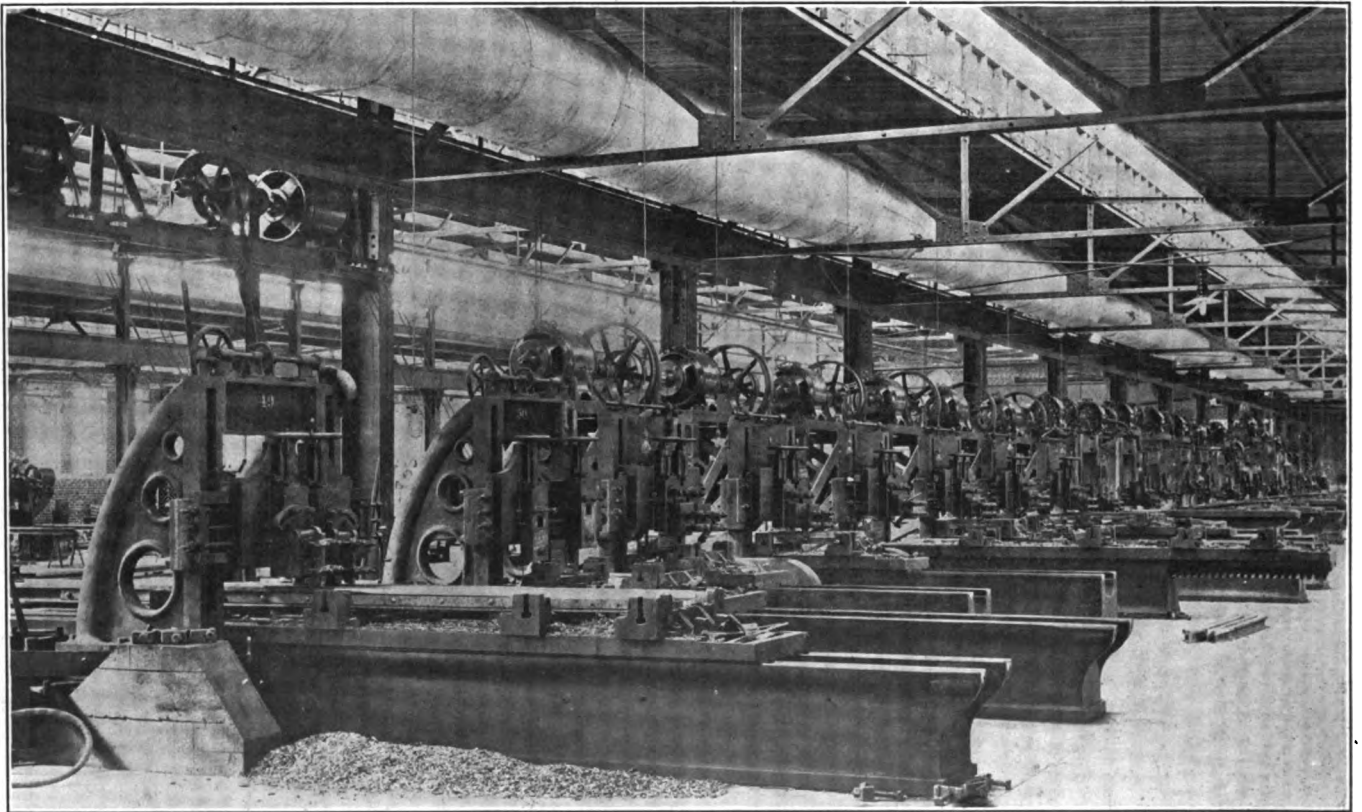
The Louisville & Nashville Railway Company recently placed a contract for furnishing its entire supply of railway frogs for the coming year with a single concern, the Weir Frog Company, which is, without a doubt, possessed of the best equipped and up to date frog and crossing shops in the country. They are located in Norwood, Ohio, a suburb of Cincinnati, on



Allis-Chalmers Company. View in Power Station of West Allis Works.



**Main Shop of the Weir Frog Company, East Norwood, Ohio.**



**Line of Planers Driven by Allis-Chalmers Type "N" Motor.**

the B. & O. S. W. and the C., L. & N. (Penn. lines) railways.

Two of the features in the application of motor drive to the machine tools used at the Weir shops are shown in the accompanying illustrations. The general view of the erecting floor shows the light, open construction, free from the maze of line shafts, belts and

pulleys which would go far to destroy the excellent lighting effects, were they employed in place of direct connected motors. The line of planers shown in the left is reproduced, showing more in detail the application of Allis-Chalmers motors, compactly mounted, on the planer heads.

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## BEFORE THE INTERSTATE COMMERCE COMMISSION

### CALENDAR OF HEARINGS

#### St. Paul, Minn., May 7, 1906

Pine Island Farmers' Elevator Company v. Chicago Great Western Railway Company.

Village of Goodhue v. Chicago Great Western Railway Company.

Hastings Malting Company v. Chicago, Milwaukee & St. P. Railway Company et al. (Rates on cattle, malt, wheat, etc.)

Hastings Malting Company v. Chicago, Milwaukee & St. Paul Railway Company. (Rates on hard and soft coal.)

#### Chicago, Ill., May 10, 1906

In the Matter of the Transportation of Petroleum and Its Products from Points in Kansas and Indian Territory to Interstate Destinations.

In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

### COMPLAINTS FILED

**Pacific Coast Lumber Manufacturers Association et al v. Atchison, Topeka & Santa Fe Railway et al.**

Alleged unreasonable requirement compelling complainants to rack, at their own expense, loaded flat or gondola cars for shipments of lumber.

**Joseph P. McCann v. Atchison, Topeka & Santa Fe Railway Company**

Discrimination against complainant in conducting tourist parties.

**A. T. Rainey v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company**

Unreasonable icing charges on shipments of dressed poultry from Eldorado, Ill., to New York, N. Y.

**Riverside Mills v. Southern Railway Company**

Unreasonable rates on waste from Augusta, Ga., to New York, N. Y.

### HEARINGS HELD

March 23-24, 1906, New York, N. Y.—In the Matter of Underbilling and Misrepresentation of Freight.

March 29, 1906, Washington, D. C.—W. R. Hearst v. Philadelphia & Reading Railroad Company et al. Reargument.

April 10-11, 1906, Philadelphia, Pa.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

April 13-14 and 17-18, 1906, Baltimore, Md.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

April 23-24, 1906, Washington, D. C.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

### Discrimination by Railroads Between Competing Water Lines

In an opinion by Commissioner Prouty, the Commission, on April 5, rendered its report and opinion in the proceeding of inquiry and investigation entitled "In the Matter of Alleged Unlawful Discrimination Against the Enterprise Transportation Company by Railroad Lines Leading from New York City."

It appeared that railroad lines leading west from New York city make joint through rates with the New England Navigation Company, controlling the Fall River line of steamers, which plies between that city and Fall River, Mass., and some other New England cities, and also controlling other important steamer lines operating on Long Island Sound. Such joint rates apply in both directions between Western and New England points. The New England Navigation Company is owned and operated by the New York, New Haven & Hartford Railroad Company. The rail lines centering in New York and running westerly thereof refuse, for stated business reasons, to make the like or any joint rating arrangement with the Enterprise Transportation Company, a steamship line plying between Fall River and other New England points and New York city, and in competition with the New England Navigation Company's Fall River line. The above facts are stated in detail in the report of the Commission.

### Rates on Round and Square Baled Cotton

The Commission has recently decided, in an opinion by Chairman Knapp, the case of the Planters' Compress Company against the Missouri, Kansas & Texas Railway Company and the Missouri, Kansas & Texas Railway Company of Texas. This case involves the reasonableness and justice of the carriers' practice of applying the same rate to all shipments of cotton, regardless of the weight of the car loading, and is essentially similar to the one decided by the Commission in October, 1905 (Planters' Compress Co. v. Cleveland, C., C. & St. L. R. Co., 11 I. C. C. Rep. 382). In that case the Commission described with detail the various modes in which cotton is prepared for transportation, the differences in size, density and other characteristics between square bales and round bales, the mechanical devices by which each is produced, the practicable car loadings possible under the different methods and degrees of compression, the system of rates applied to cotton shipments, and other circumstances and conditions gov-

erning the movement of this commodity. The former decision, so far as practicable, is by reference made a part of the decision in this case. The facts peculiar to this case are abstracted as follows:

The Missouri, Kansas & Texas Railway operates a line of railway extending from a point on the Red River, in Indian Territory, opposite Denison, Tex., through that Territory and the States of Kansas and Missouri to the city of St. Louis, with branches to various points in the States named. The other defendant operates a line of railway from Denison, Tex., to Houston, Tex., with various branch lines in that State. Upon the lines described, and particularly at points in Indian Territory, a large amount of cotton originates, which moves to St. Louis on the way to final destination. It is to this movement that the complaint in the present case is specially directed.

The rates from certain stations in this district, namely, South McAlester, Eufaula and Checotah, to St. Louis and East St. Louis, are 70 cents per 100 pounds; and from Gibson, Wagoner, Choteau and Prior Creek, to the same destinations, the rates are 65 cents per 100 pounds.

At South McAlester, which is an important point for the concentration of cotton, there are one or more square bale compress plants, but no plant of this kind appears to be in operation at any station in Indian Territory north of that point. At the other stations named, all of which are nearer St. Louis, there are round bale plants of the type owned or controlled by complainant.

The above rates apply on uncompressed cotton, that is, cotton in the flat or plantation bale form, with carrier's option of compressing en route, and a uniform allowance of 10 cents per 100 pounds is made for compression, when the cotton is actually compressed, whether by the square bale or round bale process. Formerly the full uncompressed rate was collected in the first instance, the allowance for compression being afterward refunded, and this was one of the grounds of complaint in this proceeding. This requirement, however, was dispensed with by tariff filed September 10, 1903, and since that time in effect, which provides as follows:

"Rates on cotton in cylindrical bales, compressed, will be 10 cents per 100 pounds less than rates shown above, and no compress charges will be paid on such cotton.

"When cotton is delivered to carrier in compressed condition and compress charges on such cotton have been paid by the owner, the rate to be applied thereon shall be made by deducting 10 cents per 100 pounds from rates shown above as applying on cotton with carrier's option of compressing."

Complaint was also made that a system of estimated weights was in use which operated to discriminate against round bale shipments. This may have been the case at one time, and perhaps for a considerable time, but the hearing disclosed that any prac-

tice of this sort had been discontinued, and that rates are now applied on the basis of actual weights. The current tariffs so provide and the uniform usage appears to be in accordance therewith. It is not believed that there is any present injustice in the matter of weights which requires correction.

Round bale cotton is completely prepared for transportation by a single process and is shipped directly to destination from the local stations where round bale plants are in operation. Square bale cotton, on the other hand, is produced by compressing the flat or plantation bale, and this ordinarily involves the transfer of such bales from the local stations to concentration points, relatively few in number, where square bale plants are established. These plants are often at somewhat greater distance from final destination than the local points where the cotton originates. This results in many cases in a primary movement of the uncompressed cotton in an opposite direction from the market to which it is destined, and a forward movement of the compressed cotton through the point of origin, or what is known as "back hauling."

The tariff of the M., K. & T. and its circular of instructions to agents contain specific and detailed provisions for the shipment of cotton and name the points in different sections where it may be concentrated. For example, at South McAlester cotton may be compressed from all stations north of Durant, including Wilburton branch and Tulsa division; also from points on the Shawnee division south of Ada. Durant is 75 miles south of South McAlester; the local stations named above are north of that point, as already stated. Consequently, from those stations the flat or plantation cotton may be and is hauled back to South McAlester for compression into square bales, and then the same cotton, or an equivalent tonnage of the compressed article, may be and generally is moved forward through the points of origin on its way to ultimate destination.

For this extra service in handling the cotton through the concentration point no additional charge is made in any case. The rate actually paid by the shipper is the through rate from the local station where the cotton originates to the market where it is carried, whatever may be the rate to the same market from the point of concentration. Usually, as we understand, a published local rate is paid on the movement of the cotton to the compress point, the amount of which is credited upon the through rate from point of origin when settlement is made with the shipper. There is, of course, no back hauling of the cotton baled by complainant's process and apparently no occasion for substituted billing.

The foregoing describes the only material respect, so far as we perceive, in which this case differs from the one heretofore decided. It appears in this case, as in the other, that rates on cotton in cents per 100 pounds are uniformly the same between the same points without regard to the quantity shipped. There

are no carload and less than carload rates, and no difference is made between square bales and round bales. A given quantity of compressed cotton, whether large or small and however prepared for shipment, is carried at a common rate to a common destination.

Cotton baled by complainant's process has about double the density of square bale cotton, and therefore, weight for weight, occupies only about half as much space. Square bale cotton as usually offered for transportation loads conveniently about 25,000 pounds in a standard box car; the same car can be readily loaded with 50,000 pounds of round bale cotton. The carriers refuse to accord lower rates to round bale cotton because its greater density permits so much heavier car loadings or for any other reason, and this refusal is the real ground of complaint in this, as in the former proceeding. The back hauling feature of this case is merely an incident of square bale compression which of itself is of no particular concern to complainant, since the only thing really wanted is a change in the system or basis of cotton rates, so that in place of a uniform rate on any quantity, there shall be one rate on cotton as ordinarily prepared for transportation and a lower rate when it has a density which permits say 45,000 pounds or more to be loaded in a car. In other words, the substantial demand is for a carload differential which would operate as a practical matter to complainant's advantage. All this was explained in the previous decision, to which reference is again made in this connection.

It should perhaps be here mentioned that the saving to these defendants by reason of increased car loadings of cotton would be comparatively slight, according to their contention, because of the preponderance of empty car movement on their lines in the direction of St. Louis. Their testimony was to that effect and nothing was shown to the contrary. This being the fact, it would seem that heavier loadings of compressed cotton would not materially reduce the cost to these carriers of transporting that commodity.

The conclusions of the Commission in this proceeding are stated as follows:

The only question of importance in this case was decided a few months ago in a similar proceeding brought by the same complainant. It was then held by the Commission, one member dissenting, that the application of uniform rates on cotton in any quantity and the refusal to concede lower rates based upon car loadings did not constitute a violation of the regulating statute. The reasons for this conclusion were set forth at considerable length in the report and opinion in that case, and there is no occasion to repeat the observations therein made. The gist of the ruling is indicated by the following extract:

"If the rate on a given article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate, in our opinion, does not become unreasonable to the shipper of a small quantity of the same article

merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 pounds. Particularly is this so, we think, when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons."

Complainant is the owner of a patented device for compressing cotton to a high degree of density, and the practical result of sustaining its contention would be, as it seems to us, to give it great advantage as a dealer in cotton, or require other shippers to use the process which it controls. Without renewing the argument, it is sufficient to say that the views expressed in the former case are adhered to by a majority of the Commission and are regarded as controlling the disposition of this proceeding. The "back hauling" feature described in the foregoing findings is not believed to materially affect the real question at issue or to furnish any ground for distinguishing this case from the one previously decided.

The reasonableness of the rates named from points in Indian Territory to St. Louis and East St. Louis, as applied to uncompressed cotton, including the allowance for compression, is not presented by this record and has not been considered, nor will the determination of that question in any future proceeding be precluded by what is said or decided in this report. We merely hold that the complainant is not entitled to a differential rate and are of the opinion that its contention in that regard should not be sustained.

Commissioner Prouty filed a dissenting opinion.

#### **Unreasonable Rates on Flour in Carloads**

In an opinion by Commissioner Clements, the Commission has recently decided, in favor of the complainant, the case of J. W. Moran & Son, of Lamar, Mo., against the Missouri Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company. This case involved the reasonableness of the rates on interstate shipments of flour in carloads from Little Rock to Hope, Ark., over the line of the St. Louis, Iron Mountain & Southern Railway Company. The complainant also claimed reparation on a shipment of two carloads shipped from Pennsboro and Everton, Mo., as grain, milled in transit at Lamar, Mo., and forwarded thence to Hope, Ark.

The complaining firm shipped two carloads of flour from Lamar, Mo., to Hope, Ark., by the St. L. & S. F. R. R. in December, 1903, under a milling-in-transit rate from Pennsboro and Everton, the same rate applying from Lamar, Pennsboro and Everton to Little Rock, Ark., and from that point the flour was carried by the St. L., I. M. & S. Ry. to Hope under the rate in force between those points applying on interstate shipments. This rate from Little Rock to Hope was 42 cents per 100 pounds for a distance of 112 miles, and is the subject of complaint. The

Arkansas Commission rate in force on State traffic from Little Rock to Hope is 11 cents. The M. P. and the St. L., I. M. & S. had in effect a through rate from Lamar to Hope of 28 cents, to which must be added a \$3 per car switching charge from the complainant's mill to the M. P. tracks in Lamar. The rate by the M. P. line from Lamar to Little Rock was 20 cents, the same as the rate by the St. L. & S. F. and its connecting line. The carriers subsequently reduced the charge on these carloads of flour from Little Rock to Hope from 42 to 24 cents per 100 pounds, refunding the difference to complainant, and finally offered to reduce to the basis of a 19-cent rate applying from Memphis through Little Rock to Hope, which the tariff specified as the maximum charge between intermediate stations, but such offer of settlement was declined by complainant. The Memphis rate has since been increased to 20 cents. The conclusions of the Commission are as follows:

We think it is manifest from an examination of the foregoing facts that the rate charged by the Iron Mountain for the transportation of flour from Little Rock to Hope, applicable to shipments from without the State of Arkansas received by that road at Little Rock from connections other than the Missouri Pacific, grossly in excess of the local rate applicable to shipments originating at Little Rock, was intended to encourage shipments by the Missouri Pacific and to discourage them by other lines, and is unreasonable and unjust. While a carrier under the law may decline to join with its connections in the making of joint through routes and rates applicable thereon, or may join in such arrangements with one connection and refuse to do so with another, no carrier can for any reason or purpose lawfully exact unreasonable and unjust rates for any service which it may perform in the transportation or handling of interstate traffic. The service performed by the Iron Mountain, as stated in the findings of fact, in the continued transportation from Little Rock to Hope of shipments from points outside the State of Arkansas to Hope, is the transportation of interstate traffic.

There is no proof tending to show that the rate of 11 cents for the services shown in the findings in this respect fixed by the Railroad Commission of Arkansas is insufficient or unduly low. We cannot assume that it is; much less can we assume that it is so grossly insufficient as to justify nearly double that rate for exactly the same transportation service performed in respect of interstate traffic received from any other connection than the Missouri Pacific.

It is our conclusion that the Iron Mountain should be directed to cease and desist from enforcing and collecting its present rates, herein found to be unreasonable and unjust, for the transportation of flour in carload lots from Little Rock to Hope on interstate shipments received by it at Little Rock, and to pay to the complainant the amount of reparation herein found to be due, \$78.53.

### The Coal Investigation

The investigation now being conducted by the Interstate Commerce Commission, under the joint resolution of Congress approved March 7, 1906, was taken up by the Commission on April 10, at Philadelphia, where its first hearing was held, and the inquiry was directed with a view to determining whether the Eastern bituminous coal roads have been violating the Anti-Trust law, whether the railroad companies and their officials have any interest in any coal lands or traffic, and whether or not the carriers discriminate in furnishing cars between different shippers. The hearing was continued at Philadelphia on April 11; and at Baltimore, Md., on April 13, 14, 17 and 18.

The hearing at Philadelphia developed the following facts:

1. Through three railroad statistical bureaus specific agreements exist governing the transportation and distribution of bituminous coal and fixing the percentages of the total traffic as this shall be divided between the several signatory roads.
2. These agreements have been continuously operative for ten years.
3. The Eastern New York and New England All-Rail Bituminous Coal Traffic Association carries out an agreement which specifically provides that, where fixed percentages are departed from, resulting differences shall be equalized either by diversion of traffic or suspension of shipping.
4. Another bureau agreement, under the name of the Tidewater Bituminous Steam Coal Traffic Association, governs all shipments to tidewater to New York, Philadelphia, Baltimore, Newport News and Norfolk.
5. All bituminous coal shipped to New York city or harbor, except that going through all-rail to New England, is regarded as tidewater coal, which always takes a lower freight rate. This classification is different from the other ports, where only coal for shipment beyond the capes, and this not including steamship bunker coal, gets the tidewater rate.

The first witness called at the Philadelphia hearing was Upton H. White, statistician of the Tidewater Bituminous Steam Coal Traffic Association. After explaining the work of this bureau he was excused, that he might get the agreement under which the association was organized, together with the complete file of its monthly reports. These reports, when produced, showed that this association began operations on April 1, 1896, having been organized on February 5 previous by the five great bituminous tide lines. These railroads, with the percentages as first agreed to and as existing now, are as follows:

|                         | April,<br>1896. | February,<br>1906. |
|-------------------------|-----------------|--------------------|
| Pennsylvania .....      | 46.65           | 45.20              |
| Beech Creek .....       | 11.05           | 8.16               |
| Baltimore & Ohio.....   | 11.85           | 17.64              |
| Chesapeake & Ohio ..... | 12.00           | 16.18              |
| Norfolk & Western.....  | 18.45           | 12.82              |

The witness testified that none of the roads has



withdrawn; that the Chesapeake & Ohio went out once for twenty-four hours, and that the Philadelphia & Reading is now in. It was noted as a matter of interest that, after the passage of the Elkins law, the form of report of this association was changed. All earlier reports were headed "Commissioner's monthly tonnage report, showing percentage of designated tidewater steam coal traffic to which each member is entitled, tonnage moved for the month and for the association year to date, with excesses and deficits for each line." As changed with April, 1904, the heading reads, "Monthly tonnage report, showing amount of tonnage shipped to tidewater by each road a member of this association, and the tonnage per cent."

L. W. Passmore, statistician of the Eastern New York & New England All-Rail Bituminous Coal Traffic Association, organized in April, 1895, and now consisting of the Pennsylvania, Beech Creek, Erie and Buffalo, Rochester & Pittsburg railroads, was called and agreed to get the contract and weekly reports made. Subsequently this agreement was presented, and disclosed an ironclad contract, under which, whenever any road in the association carries coal in excess of its percentage, the commission is empowered to divert tonnage from it to the others who are below their proportions, or, when this is impracticable, to restrict its shipments until the monthly tonnages are restored.

The executive committee of this association, Mr. Passmore testified, consists of J. G. Searles, of the Pennsylvania; F. E. Herriman, of the Beech Creek; A. G. Yates, of the Buffalo, Rochester & Pittsburg; and G. A. Bergen, of the Erie. The original percentages and the railroads concerned, some of which have since been consolidated, were:

|                                      |      |
|--------------------------------------|------|
| Pennsylvania Railroad .....          | 37.9 |
| Western New York & Pennsylvania..... | 4.8  |
| Beech Creek .....                    | 12.5 |
| Buffalo, Rochester & Pittsburg.....  | 27.8 |
| Fall Brook Railway.....              | 9.1  |
| New York, Lake Erie & Western.....   | 7.9  |

W. W. Atterbury, general manager of the Pennsylvania Railroad, stated that he owned small blocks of stock in four coal companies, and that J. B. Thayer, Jr., fourth vice president of the Pennsylvania, held stock in one. He also said that since January 1 the Pennsylvania has posted mine car ratings, and that perhaps "40 to 50 per cent. of the number of cars asked for are supplied." The examination then turned to private cars, and Mr. Atterbury was asked if there was any objection to abolishing them.

"From a transportation standpoint," he replied, "I think that every railroad man would be glad to get rid of them, but I am frank to say that I do not see how any large coal operator can surely fill contracts without them, for the reason that he cannot otherwise be assured of having enough cars at the mines."

"Then it would seem," observed counsel for the

Commission, "that large companies could not do business on the Pennsylvania Railroad without a preference."

"The shipper owning private cars has an advantage," replied Mr. Atterbury. "I will not admit it is a preference. I call it cars."

At the second day's hearing in Philadelphia, the principal witness examined was J. G. Searles, general coal freight agent of the Pennsylvania Railroad Company and chairman of the executive committee of the Eastern New York and New England Bituminous Coal Association. He admitted that the agreements, which are the life of the two so called statistical bureaus, not only fix the percentage of the total coal traffic to the East, both tidewater and all-rail, but actually fix a penalty of 75 cents per ton to be collected from any road overstepping its allotted tonnage or cutting the freight rate previously agreed upon, and that this penalty fund was distributed pro rata among those roads whose tonnage was cut into by the one which took business beyond what had been mutually agreed upon as its share.

Through the Tidewater Bituminous Steam Coal Traffic Association and the Eastern New York & New England Bituminous Coal Association, the Pennsylvania and the New York Central group of railroads, which are virtually all those prominent in the eastbound bituminous coal trade, have apparently been engaged in controlling the trade:

First, by a distribution of the tonnage among themselves.

Second, by regulating shipments to the different markets.

Third, by fixing freight rates, or, as was stated, by "agreeing" among themselves as to what rates should be charged.

Fourth, by exerting themselves to regulate the actual marketing of coal.

By reading from the minutes of the Tidewater and New England associations, it appeared that it was the avowed purpose of the association to agree on a schedule of rates as well as a percentage of tonnage.

No member could depart from the schedule, as determined, without paying the penalty. If he, for any cause, wished to reduce the rates, he could do so only by breaking his contract with the association, or by obtaining a resolution from the association giving its consent.

Mr. Searles acknowledged that the only competition New England and New York could get in the price of coal must come from the violation of the agreement by the New York Central Railroad. Otherwise the territory is a closed one. He denied that there was ever an exchange of statistics between the Tidewater Association and the others, but admitted that he had the statistics of all.

In March of each year the rates were determined for the ensuing year, beginning April 1. Up to

March, 1905, it was brought out that the words "had agreed" were used in speaking of the rates, but after that date they had been changed to "individually announce." Asked to explain this change, Mr. Searles said, "Perhaps it was less strong." But when this remark was caught up by counsel and a further explanation demanded, he said, "I don't know as it makes any particular difference what word was used. The purpose was the same, anyway." "You mean the only change was in the wording, not in the meaning," said Commissioner Prouty.

Commissioner Prouty wanted to know what statistics had to do with the fixing of rates. "Oh, they give us a chance to see how our rates compare with those of other roads and get our share of the business," was the admission of Mr. Searles.

Minutes from a meeting of the Tidewater Association, held in September, 1900, "for the consideration of rates on bituminous coal for export," were read by counsel for the Commission to show that there had been an attempt on the part of the Pennsylvania Railroad to fix the rates for all lines in the association.

At this meeting, according to the minutes, the Norfolk & Western and the Chesapeake & Ohio asked permission to fix the rate on coal from Pocahontas and New River points to Newport News and Norfolk at \$1.25 a ton. The Pennsylvania, New York Central and Baltimore & Ohio, the other three railroads in the association, objected to this. Then Mr. Searles moved to fix the rates at \$1.40, but this failed, as the Baltimore & Ohio voted with its competitors from the South, and the meeting finally broke up without determining any rate, and the matter was referred to the presidents or vice presidents of the corporations for settlement.

"What business did you have," the counsel asked, "to say to the Norfolk & Western that it should not carry coal for \$1.25 a ton?"

"We did not think it would be profitable to carry it at such a low rate. If the Norfolk & Western did it we should have to do it, too."

"And they couldn't reduce their rate without your consent?"

"They could have done so, but not without consent."

"In other words, they would have had to break their agreement with the association?" And Mr. Searles admitted this would be the case.

Attention was then given to any possible agreements between the Pennsylvania Railroad and the New York Central for the distribution of traffic in certain districts in the territory each serves. "I know of none, other than that already spoken of," said Mr. Searles. "Of course, we have agreements as to trackage, as is natural with allied roads." He further admitted that there was an agreement that the New York Central should take coal only from the mines already established.

W. W. Atterbury was again examined, and his testimony was directed to explaining how he could

treat a coal company fairly in the matter of percent age when no record of its actual tonnage was kept. In all the districts, it was explained, daily records were recently posted, showing how many cars, private and railroad, are furnished each operator, but this has been done only since January 1, prior to which time the lists were on file at the Broad Street Station, in Philadelphia. These lists were open for anyone to examine if he came "in the proper spirit."

"Nevertheless, these people who want to examine the sheets usually get turned down, don't they?"

"Yes; we refused to let the Pennsylvania Coal & Coke Company look at the sheets, as they have brought suit against us."

"Have you ever permitted anyone to examine the sheets?"

"I don't know," was Mr. Atterbury's response.

Replying to a question of Commissioner Cockrell, Mr. Atterbury went into the matter of the sale of cars to the Berwind-White Company during the anthracite strike of 1902. He admitted that the cars were sold at a time when it was hard to get them, and that he did not know of a time when it was more difficult to get cars. The sales were made by the late Sutherland M. Prevost, the cars bringing from \$1,160 to \$1,200 apiece.

The Commission continued its investigation under the Tillman-Gillespie joint resolution in Baltimore on April 13, 14, 17 and 18. One of the first witnesses called in Baltimore was Arthur Hale, general superintendent of transportation of the Baltimore & Ohio Railroad Company. He refused to admit discrimination against independent coal companies, and insisted that the private car system is open to everyone, and, therefore, unjust to none. He conceded that private cars confer an advantage, but denied that the railroad "played favorites." He thought the abolition of private cars would benefit the railroad. It was established that the Consolidation, Fairmont and certain other companies get 60 per cent. of the cars, and the "independents" the other 40 per cent.

It was developed that the Consolidation Coal Company owns the Cumberland & Pennsylvania Railroad, and that the Baltimore & Ohio Railroad controls the Consolidation; also that the Consolidation controls the Fairmont Coal Company. Counsel also endeavored to show that the Northwestern Coal Company is likewise controlled by the Baltimore & Ohio, and that the distributing companies are controlled by the railroad.

"As a matter of fact," he summed up, "the coal is raised out of the ground by companies which the Baltimore & Ohio owns or controls; it is transported over roads which the Baltimore & Ohio owns or controls, and is then distributed to retailers by companies which the Baltimore & Ohio either owns or controls?"

"I cannot challenge that statement," said Mr. Hale, "although I do not know that it is true."

Another witness at this hearing was Captain Hicks, who, prior to 1881, was a conductor in the employ of the Pennsylvania, but has since become a

coal operator on a large scale. Among the companies which he testified to being interested in were the Bagdad Coal & Coke Company, the Leachburg Coal & Coke Company, the Avonmore Coal & Coke Company, and the Belmont Coal & Coke Company. Captain Hicks said that at one time or another he paid dividends to Messrs. Joseph Woods and E. B. Taylor, of Pittsburg, both Pennsylvania officials, and to General Manager Atterbury and Vice President Thayer, of that company. He declared that he remembered no others, and that he would prefer to show the stock books of the company. The stock in one of these companies, he testified, paid 25 per cent. and was "reasonably profitable."

"How did you apportion the dividends?"

"Why," replied Captain Hicks, "I just figured it up and gave them what I thought proper."

At the second day's hearing in Baltimore, Third Vice President Potter and General Manager Fitzgerald, of the Baltimore & Ohio, testified that they had an interest in companies whose prosperity in business depended upon the facilities furnished by the railroad. Coal and Coke Agent Matthews admitted that the Baltimore & Ohio discouraged the formation of new companies for mining coal because, the volume of traffic being the same, it was to the advantage of the railroad to carry coal from a few rather than many mines. In this connection, counsel for the Commission sought to show that the railroad, being in control of the big mining companies, is concerned not only directly in the rate of freight, but almost as deeply in the price of coal, being at the same time a large consumer and indirectly a dealer in the commodity.

A record of purchases of coal by the railroad showed a wide diversity in price—from 40 cents to \$1.25. Counsel pointed out that the records showed that the larger the company the larger the price which the railroad has paid, and asked for an explanation.

"We buy more from the larger shippers in order to keep up their selling organization," was the answer, "and their larger selling organization makes their prices higher."

When General Superintendent of Transportation Hale opened his testimony during the second day's hearing, counsel began by asking him if he had taken any action that was based on the inkling that the Commission was coming down to Baltimore to investigate the complaints against the railroad with regard to its allotment of coal cars. This brought out the fact that on April 7 a circular letter was sent to all the companies along the road asking them if they were getting all the cars they wanted, and soliciting them to inform Mr. Hale if they were getting all the cars they wanted. To this expression of solicitude on the part of the railroad the Douglas-Rauch Company sent the following reply, which was read:

"I beg to reply that your offer of assistance in the way of increased supply of cars for our mine is gratefully received. And while we accept your offer to

comply with your duties as common carriers and as required by law, we would not have it understood that we acquiesce in your former dereliction of your legal duty, whereby, on account of such willful and criminal conduct, you well nigh condemned our business and property rights. By such discrimination it has caused us to become overwhelmingly in debt, for which reason we have placed our property for sale, which event, if effected, will save ourselves from bankruptcy.

"You have been apprised of the fact that we have had orders canceled time and again on account of the inability to get cars to load, notwithstanding we have made daily requests for cars, and yet your company, while furnishing cars to other companies in this district whose capacity was not as great as ours, discriminated against us without cause. Repeatedly we wrote you, copies of which letters I have in my possession, citing definitely when and where you were placing cars to such companies with inferior capacities, matters upon which we for months informed ourselves daily, and yet you refused absolutely, without cause or reason, and contrary, as we have said, to your duties in such matters and the law.

"Now you come, when your conduct is being investigated and made public, when you are, by force of public opinion and sentiment and by officers of the law compelled to act, and in an interested and helping manner suggest that would gladly have us report if our car service is not sufficient, implying that you will, in your conscientious manner, see that we are receiving that to which we are entitled, if there is any oversight in the distribution. We understand you, and know you are doing what you are compelled to do. I have made these investigations, considered these matters and written these letters to you about it because of my heavy interest in my company, because I felt I was responsible to my company for the conduct of the business and the success of the company, and because the whole matter rested on my shoulders. I repeat that we are grateful, yet I fear your kindness in our behalf has come too late."

Thomas H. Boswell, president of the Merchants' Coal Company, made the statement that he thought the company had been done harm by having officials of the railroad company as owners of its stock. The following officials of the company, he said, held stock:

|                                                        |      |
|--------------------------------------------------------|------|
| Walter Ancker, superintendent of floating equipment... | 588. |
| General Manager Fitzgerald.....                        | 788. |
| Geo. M. Shriver, assistant to President Murray.....    | 50.  |
| C. E. Ways, of freight department.....                 | 200. |

J. W. Grantham, of Scottsdale, Pa., testified. He is a building contractor and had the contract for erecting the plant of the Chieftain Coal Company, near Wilsonburg, W. Va. After he had put up the buildings, his next duty was to make the railroad connection with the Baltimore & Ohio main line. He had no trouble getting promises at first, he said, but when the time came for him to connect his side track

with the tracks of the railroad objections arose. He was making a fill-in of dirt for the bed of his road when one day he got a letter from Mr. John Bassel, attorney for the Baltimore & Ohio at Clarksburg, telling him to go no further and threatening suit for damages, besides criminal prosecution for trespass if he did not cease operations at once. Mr. Grantham said he replied orally to the letter.

Mr. Grantham said he just went on with his work regardless of the letter from the attorney for the company. One day a number of railroad employees outnumbering his forces came along and upset his men, overturned his carts and threw his ties and rails into a ditch. He put in a good word for his men by explaining in their behalf that if they had had even numbers with the railroad forces they would have stood their ground.

After this defeat, Mr. Grantham said he was compelled to get out a charter for his side track under the laws of West Virginia. His track he christened the Kittylick Railroad, and his charter gave him power to make a connection with the Baltimore & Ohio. This move, he pointed out, was a big victory, but the Baltimore & Ohio made him build new roadbeds to connect at a point 300 yards from where he first intended to meet the Baltimore & Ohio. This change took six months, he said, when, by the original plan, he could have made the connection in two days.

Then there was more trouble for Mr. Grantham. Time and again his building material was held up, he declared. One day he got tired of it. He went to the freight official and told him that he would have his delayed freight by 9 a. m. the following Monday morning, or something would happen.

"Did you get it?" asked Commissioner Cockrell.

"Yes," replied Mr. Grantham, "there were three carloads of material there waiting for me Monday morning, and then the Chieftain mine was sold out."

During the third day's hearing in Baltimore a voluntary statement was made by Vice President Thayer, of the Pennsylvania Railroad Company. He emphatically denied that either the Pennsylvania Railroad Company or the Baltimore & Ohio Railroad Company is interested, directly or indirectly, in any association, pool or combination for the restraint of trade, for the giving of rebates, or for the favoring of one shipper over another. Counsel objected to the statement being made at that time because, he said, it was out of order, was an interruption, and should not be made until the minutes of the coal companies were at hand. Mr. Thayer insisted upon making the statement as an act of justice, contending that the testimony brought out in the Philadelphia hearings and published placed the railroads in a false position and created an impression upon the public mind which is erroneous and damaging. Mr. Thayer also made a voluntary statement as to his holdings in coal companies. That he had ever received any money or stocks from any coal company free or at a nominal price he declared to be untrue. He said that when he became

Fourth Vice President, and in absolute charge of coal rates and the coal business of the road, he determined to part at once with his holdings, and did so last December. The sale, he said, was made before there was any talk of the pending investigation.

In discussing the evil of rebates, Mr. Thayer said that, either directly or indirectly, the Pennsylvania Railroad had paid no rebates since the spring of 1900, and that his company had assisted in the passage of the Elkins Act and in the breaking up of the practice.

At the fourth day's hearing the principal fact developed was that the Baltimore & Ohio Railroad owns 52 per cent. of the capital stock of the Consolidation Coal Company; that the Consolidation owns a little more than one-half of the stock of the Fairmont Coal Company, and that the Consolidation Coal Company has a broad charter, which enables it to build and own railroads.

### AMERICAN SHIPPERS' ASSOCIATION

The president of the American Shippers' Association, an organization formed in December, 1904, for the purpose of securing a clean bill of lading, has issued a circular in which there is a call for a meeting of the executive committee. It is said that the association will undertake to ferret out and secure a correction of rates that are unreasonably high. The circular in part reads:

"It is regarded as desirable that there should be a meeting of the Executive Committee of the American Shippers' Association at an early date, and I would like to know if it would be agreeable for you to attend a meeting in Chicago on Friday, May 4. The relations between the carriers and shippers are such that it seems imperative that the reorganization of the American Shippers' Association be proceeded with regardless of the uniform bill of lading controversy.

"During the last few years freight rates have been advancing steadily, either by direct increase or by change of classification, or by withdrawal of rebates. The withdrawal of the rebate system has added millions of dollars to the treasuries of the carriers, and now that all shippers are practically on the same basis, so far as the published schedules are concerned, the question has been raised as to the advisability of starting an agitation for a general reduction in freight rates. Every move on the part of the carriers since the community of interest plan has been adopted has been to curtail the privileges of the shippers, and a more grasping disposition has been manifested. It is important, therefore, that our plans be outlined and our work commenced."

### R. D. WOOD & CO. ACQUITTED

A jury in the Philadelphia District Court acquitted R. D. Wood & Co. of the charge of accepting an unlawful refund on 1,500 tons of iron pipe shipped to Winnipeg, Canada. Judge Holland's charge to the jury nullified the effect of some of the strongest points made by the Government. The jury was out only twenty minutes.



## BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

### Origin of the Pass

*To the Editor of Freight:*

SIR—Please advise me the origin of passes on transportation lines. E. B. GUE.

LAS VEGAS, N. M., April 10, 1906.

The origin of the pass, as such, is shrouded in mystery. In all probability it arose from the custom of "chalking" the hat. The origin of this is mentioned in the *Washington Critic* and quoted with approval by Ringwalt, in his "Development of Transportation Systems in the United States":

"The first man to introduce the hat chalking business in this country was Mr. Reeside, the father of J. E. Reeside, of Washington. Away back in the days of Old Hickory, the first named gentleman, in connection with others, was the great Star Route contractor of the Union. Mr. Reeside and his friends ran lines of stage coaches from this city to all the leading points in the West and Southwest. Mr. Reeside was agent for the company for this city, and knew all the M. C.'s from the sections named. Occasionally he would take a liking to some Representative or Senator, and would tender him a free ride to his home when Congress adjourned.

"Now, the old man was mighty strict with his drivers and agents, holding them pecuniarily responsible for the fare of everybody who got on to the coaches. To prevent his agents being imposed upon by forged passes, the old man devised a peculiar hieroglyphic. The M. C. would have his name printed on the inside of his hat, and Mr. R. would take a piece of chalk and write his hieroglyphic on the outside of the hat.

"In a short time Mr. R.'s mark became known on all the lines, and a man with that mark on his tile could ride all over the West and Southwest gratis, because, as the drivers expressed it, 'The old man's chalked his hat.' Thus Mr. R. became the forerunner of all the chalk daubing now in the United States. This is a fact, as the writer had it from the lips of Mr. J. E. Reeside, who has seen his father sling the chalk many a time in days long gone by."

It will be observed that in those days the stage operator would "occasionally" take a liking to some Representative or Senator. Until a very recent date it is believed that the liking was of rather frequent occurrence, and that "occasionally" would be an exception and not a rule.—[Ed.]

### A Bill of Lading Entanglement

*To the Editor of Freight:*

SIR—We would like to ask your legal department for some information.

We bought a lot of bran from a party in Sharon, Wis., who had bought this bran from several Minneapolis shippers as well as country shippers, and the bran was billed to the order of the party of whom we purchased it, "Notify W. R. Mumford Company, Chicago."

Party we bought of, instead of delivering the B/L to us, gave us orders on the roads for the cars of bran

in question, and we attached these orders to our own orders and secured the delivery of the bran.

Shortly afterward the party of whom we bought the bran failed. It seems he did not pay the drafts drawn against the B/L attached for the bran in question. The drafts were deposited in the usual form of business at Minneapolis and interior Minnesota points by the sellers of the property, and the banks forwarded the drafts to their correspondents at Chicago to whom they usually send them, and they, in turn, sent the drafts with B/L attached to the only bank at Sharon, Wis. This bank retained the drafts and B/L for some days, and while they were in the bank's possession the party of whom we had purchased the bran drafted on us through the said bank at Sharon, and we paid his drafts, and the money was returned to the bank at Sharon and credited to the party of whom we purchased the bran, but whether paid to him or not, of course, we do not know.

What we want to know is: First—Did the party of whom we purchased this bran have the right or not to give orders on the railroad companies for the bran, it being billed to his order, and did the railroad companies have the right to deliver this bran on the orders of the party of whom we purchased it to us without the surrender by said party or ourselves to the road for the cars of mill feed in question?

Looks to us as though the shipper waived his rights on the cars in question when they changed the billing from their order to the order of the party of whom we purchased the bran, thereby giving the party the right to make disposal of the property without surrender of the B/L. And secondly, is not the bank of Sharon, Wis., the agent of the original drawers of the B/L and drafts, and is not the bank responsible therefor to W. R. Mumford Company or to the drawers of the original drafts and the B/L for the amount of money collected from us on certain cars of mill feed while holding papers in their possession and then returning the papers and drafts unsatisfied?

We ask this information of your legal department, as your agent informed us when in here that if we had any question we wished to ask we could refer same to you and your legal department would furnish us a reply to same.

Thanking you most kindly in advance, we are

Yours truly,

W. R. MUMFORD COMPANY.

CHICAGO, April 10, 1906.

While the several bills of lading in these cases were muniments of title, there was no transfer of the title until your vendor had paid the drafts to which the bills of lading were attached (*Dows v. Bank*, 91 U. S. 618, approved and followed in many cases). As your vendor never had title, he could not transfer title to you. That the bills of lading read to your vendor's order would only show title in him *prima facie*, and such presumption is rebuttable (*North Penn. R. Co. v. Commercial Bank*, 123 U. S. 727). That you were a "notify party" does not authorize the carrier to deliver the property, billed to order, to you. Again, it is probable that the bills of lading contained a clause

containing a stipulation similar to Condition 9 of the so called Uniform Bill of Lading, by which the carrier agreed not to deliver the goods until the surrender of the original documents, properly indorsed. The wrongdoer is the carrier, by reason of neglect to properly hold the goods in accordance with the custom and agreement. The carrier is responsible for the conversion of the goods to the true owner. Who, under the circumstances, is the true owner cannot be said from the facts before us, as the relationship of initial and final bank to the original vendors is not stated. If the drafts were discounted there would result a different law than if the papers were for collection only. Again, it is not clear whether or not the bank at Sharon, Wis., was negligent in holding the drafts. Possibly the fact that the drafts were held permitted the perpetration of the fraud.

In handling property covered by order bills of lading, it should be borne in mind that the name of the order party is in general under the contract immaterial. It does not conclusively prove title to the goods in him. Such bills of lading, under the operation of the usual condition, must be surrendered or their absence accounted for and proper indemnifying bond given.

### Information of Tariffs Wanted

*To the Editor of Freight:*

SIR—We would like to inquire if some reader of FREIGHT who is a traffic manager cannot inform the writer of the best methods of securing new tariffs as they are issued.

What I am desirous of learning is the most practical way of getting hold of new tariffs promptly that may be of interest to us or affect our business. In this particular case we only require tariffs from a few different lines covering the Northwest, and, of course, many of their tariffs would not interest us; still, there are many tariffs issued yearly that we would like to get hold of promptly.

Any information along this line will be considered a personal favor and very much appreciated.

Yours respectfully,

LA CROSSE FLOW COMPANY,  
J. F. CROSS.

LA CROSSE, Wis., April 9, 1906.

This is one of the most difficult matters with which a traffic manager has to contend. The number of tariffs and supplements filed yearly with the Interstate Commerce Commission aggregate 250,000 or 300,000. Many carriers will, however, forward, on request, copies of tariffs and supplements. Transportation lines are generally liberal in this respect. One cannot force the carrier to furnish tariffs, for they are only required to file, post and publish them. FREIGHT has been advocating the issuance of bulletins by the Interstate Commerce Commission showing the more important changes in rates. There are some objections to so doing, but we know of no better service the Government could render than so placing shippers that they would have in their possession information concerning rates.

### Claims for an Overcharge

*To the Editor of Freight:*

SIR—The writer has filed a claim against the C., M. & St. P. for overcharge on carriages shipped from Moline to Middleton, Wis. The shipment was charged at 1½ T 1st class, which is in accordance with the Western Class, making the rate .6965. There is a commodity rate on this article from Moline to Madison which is .3643, and by using this to Madison and 1½ T 1st class from Madison to Middleton, which is 18c., makes a through rate of .5443. The C., M. & St. P. declined to pay this claim, saying that the Wisconsin State law will not permit it. I do not understand that the Wisconsin State law has anything to do with an interstate shipment.

Will you kindly give any information you may have on this and oblige,  
Yours truly,

J. F. STROMBECK.

MOLINE, Ill., April 5, 1906.

We cannot agree with the contention of the C., M. & St. P. Ry. Co. A careful consideration of the Wisconsin statute leads us to conclude that, notwithstanding there is a prohibition against rebates and discriminations, there is no provision covering this or similar cases. This is a case where the sum of two locals, one an interstate rate, the other an intrastate rate, is less than the through rate. Such facts shown in a proceeding to collect an excessive rate would tend to show the unreasonableness of the rate charged and paid. The shipment made was an interstate shipment, and, so far as is shown, one in accordance with the rates filed and published. Such rates, whatever may be the reasonableness or unreasonableness of them, are conclusively deemed to be the legal rate, and any departures therefrom are prohibited by law. For the violation of the law in this behalf both shipper and carrier are liable, Act February 19, 1903.

We think this case clearly within the statute referred to.

### Vendee Has Right of Inspection

*To the Editor of Freight:*

SIR—We notice in the April number of your magazine an article, on page 186, regarding the inspection of order cars, and decision of the West Virginia court. Would it be possible for you to secure for us an appeal of this case to the Supreme Court, as we would like to read it carefully, as it is something that we are interested in.

We notice that you state as an argument, that if there be a shipment of stone and it be billed as wheat, the railway becomes a party to the fraud which the shipper practices upon the consignee.

If you are in a position to do so, we would like to have you explain to us why the railroad company should protect the receiver any more than the shipper. It is admitted that the railroad company will not allow contents of car unloaded and weighed, and as far as fraud is concerned, the receiver can be deceived much easier on weights than he can on grade.

We would be pleased to hear from you regarding the above.  
Yours truly,

JOHNSON & SON.

GOSHEN, Ind., April 4, 1906.

We have to acknowledge receipt of yours of April 4. The opinion in the case of *Dudley v. C., M., C. & St. Paul Ry. Co.* will be found in 52 *Southeastern Reporter*, page 718. We cannot undertake to furnish copies of opinions, but suggest that if you desire a copy of this one you write to West Publishing Company, St. Paul, Minn., who may be able to supply same.

We are disinclined to enter into an argument explaining "why the railroad company should protect the receiver any more than the shipper." That question is not involved in either the case decided by the West Virginia court or in our editorial upon the subject. Morally, a purchaser has a right to select those things which he contracts to buy, and unless he himself remove the goods, has a right to examine them upon delivery by the vendor. As far as our personal purchases are concerned, we are not in the habit of buying "a pig in a poke." For our own actions in this respect we are solely responsible. As a matter of law, however, it has been repeatedly held, and there is no adjudicated case to the contrary, that the vendee has the right of inspection; some cases go so far as to say he has a right to sample. For the law upon the subject we are not responsible, but we think it a wholesome interpretation of what reasonable, honest business men would expect.

#### Liability for Keeping Goods

*To the Editor of Freight:*

SIR—In your issue of February, No. 2, Volume V, on page 96, you give the following decision:

"If a railroad company negligently refuse to receive and transport freight intended for immediate sale on the market, it will be held liable for the expense of keeping the goods and for the difference in price of the commodity when it should have arrived at the market and the price when it did actually arrive. And the market reports in journals are competent evidence to show the state of the market (*C., B. & Q. Ry. v. Todd*, 105 N. W. 83.)"

Will you kindly state before what court this was rendered? We would also appreciate it if you would advise us as to whether you believe this is good law, and if similar contentions would be sustained.

We are admirers of your journal, and are in hearty sympathy with your efforts to induce much needed railroad legislation.

Yours truly,

THE KEMPER GRAIN COMPANY.

KANSAS CITY, MO., February 20, 1906.

The case referred to (*C., B. & Q. Ry. v. Todd*, 105 U. S. 83) was decided by the Supreme Court of Nebraska. The particular shipment was one of sheep, and the facts were about as follows: A shipper of live stock on the 26th of a month ordered cars in which to ship on the 28th. The equipment was furnished, but, owing to a storm, the sheep were not loaded in time for the usual train on the 28th. After loading, the shipper was informed that the quarantine regulations prescribed that the sheep must be inspected before shipment. In a day or so, and while the sheep were being held at point of origin, the quarantine regulations were withdrawn. Owing to a Sunday inter-

vening, the sheep were not shipped for some two or three days after they arrived at the loading yards. Suit was brought to recover the cost of keeping the sheep at the yards and the decline in the market. The law applying was as is stated in the digest in the February number. Owing to the lack of evidence to support some of the verdict, the case was remanded to the lower court.

We think the law as laid down in the opinion is good law, but it must not be forgotten that proper preliminaries must be observed in order to have such a decision. For instance, the order for equipment to be furnished at a stated time must be accepted by the carrier; then equipment not being furnished, there is the element of damage. In short, the carrier must be made aware of the necessities of the case. Many of the Western States have decisions similar to the one before us. As the shipment was one from a Nebraska point to Omaha, it was an intrastate shipment. With proper preliminaries, such as we have suggested, we cannot see why the same ruling might not be made by a Federal court in respect to interstate commerce.

#### Limitation of Liability

*To the Editor of Freight:*

SIR—Please advise us, if possible, whether there has been any ruling on the question of limitation of liability as affecting a rate. G. B. & Co.

SAN FRANCISCO, Cal., March 30, 1906.

1. If by this inquiry is meant a general limitation of liability of the carrier, this matter has been determined by the carriers themselves, and is referred to as the class of service. It is provided by the Official Classification that "property shipped not subject to uniform bill of lading conditions will be charged 20 per cent. higher than as herein provided (subject to a minimum increase of 1 cent. per 100 lbs.) and cost of marine insurance." A uniform bill of lading is, upon its face, a contract for carriage in which the liability of the carrier is limited. It is not necessary here to inquire whether or not such a contract is valid or to what extent the liability of the carrier is limited. The effect of this rule is that, if the shipper does not care to accept the terms and conditions of the bill of lading, he may invoke the full liability of the carrier (whatever that may mean in the particular State where suit is brought) by paying a rate of 20 per cent. higher than that provided. Thus, in a shipment of first class articles from Chicago to New York, the rate, if the goods be shipped under the uniform bill of lading conditions, would be 75 cents per 100 lbs.; if the shipper elect, however, not to accept the conditions, the rate would be 90 cents per 100 lbs. Similar rules are in force in Southwestern and Western classifications.

It can be said, therefore, that in the minds of the carriers a 20 per cent. advance in rate represents to them the cost of assuming full liability for delivery of the articles. This advance is now a matter of investigation, and while it is very much more than a policy of insurance would cost, it has been said that

the carriers do not wish to assume full responsibility for the delivery of commodities in the same condition in which they receive them.

2. If the question refers to a "released valuation" it can be said that the point has never been definitely decided. Assume that the rate upon commodity "a" between points "x" and "y" is 25 cents per 100 lbs.—no valuation stated or required. What ought the rate to be if, at the time of shipment, the commodity be released to a definite valuation per unit of weight? Manifestly, the relation which the proposed rate should bear upon the released article would vary according to the relation which the released value bore to the actual value. In the making of rates and classifications the intrinsic and commercial value (as well as other elements) ought to be taken into consideration. There have been decisions concerning the rates on one commodity the value of which exceeded the value of another commodity similarly packed, *e. g.*, patent medicines and mineral waters. The former were of greater value, but the latter moved in greater volume—another element in the making of rates and classifications.

The question of valuation affects the element of risk (one of the elements of rates) rather than the element of value.

It has been said that there are some forty elements which enter into the making of classifications—bulk, weight, volume, risk, valuation, etc. No one has yet attempted to mathematically define the influence which each of these elements has in the making of the classifications. Such being the case with the elements themselves, it would be practically impossible to determine what weight should be given to a portion of one of those elements. As stated, valuation in the sense in which it is now used, is an element of risk. Suppose, for the purpose of argument, it had been ascertained for a long series of years that 10 per cent. of all the books transported were destroyed. Thus it must be determined what relation the value of these books bore to the total amount of freight. It would be further necessary to ascertain what relation of market value a proposed shipment of books would bear to the released valuation.

Upon the whole it is safe to conclude that, if by releasing the valuation to one-half the market value, the shipper thereby assuming some of the risk which, under other circumstances, would fall upon the carrier, a rate should be made less in amount (but certainly not one-half) than if the carrier assumed full liability in the event of loss or damage.

No consideration is given to other than dead freight or freight which does not have any inherent qualities by which it will injure itself or other freight in transit. While no case is decisive of the point, the following cases are of interest: *Baldwin v. Liverpool, etc., R. Co.*, 74 N. Y. 124; *Mo., etc., R. Co. v. Trinity, etc., Co.*, 1 Tex. Civ. App. 553; *No. Ger. Lloyd v. Hennle*, 44 Fed. 100; *Warner v. N. Y. C. & H. R. R. Co. et al.*, 4 I. C. C. 324; *Loud v. S. C. Ry. Co. et al.*, 5 I. C. C. 529; *Page v. D., L. & W. R. Co.*, 6

I. C. C. 548; *Grain Shippers' Asso. v. I. C. R. Co.*, 8 I. C. C. 158; *Georgia Peach Growers' Asso. v. Atlantic Coast Line*, 10 I. C. C. 55; *Elliott Railroads*, sec. 1563.

## Santa Fe Rebate Case

*To the Editor of Freight:*

SIR—Will you please advise if any legal proceedings were brought against the A., T. & S. F. Railway account rebates alleged to have been paid to the Colorado Fuel and Iron Company?

Yours truly,  
MOLINE PLOW COMPANY,  
C. A. BANISTER.

MOLINE, Ill., April 10, 1906.

The only proceeding brought against the A., T. & S. F. Ry. Co. on account of rebates alleged to have been paid to the Colorado Fuel and Iron Company other than the investigation by the Interstate Commerce Commission, was a proceeding in the United States Circuit Court, at Kansas City, seeking an injunction against granting rebates. The injunction was granted in March, 1902. Subsequently, in contempt proceedings, Judge Phillips decided that the injunction was too broad and not warranted under the law as it existed in 1902, being prior to the passage of the Elkins bill. Judge Phillips' decision is to be found in *FREIGHT*, volume V, page 33.

## Car Service in Indiana

*To the Editor of Freight:*

SIR—We are trying to get together all the information we can on car service. We have lately been having disputes with the railway, through the Car Service Association, on account of their refusal to refund car service on account of inclement weather, particularly rain. We wish to ascertain whether similar cases have been tested in the courts, particularly of Indiana, and if so, when, where and with what results.

Very truly yours,  
BIRDELL MFG. COMPANY,  
L. F. RYER, Traffic Manager.

SOUTH BEND, Ind., April 10, 1906.

There is considerable difficulty in referring to decided cases relating to car service, for the reason that many of the cases are in courts where the decisions are not reported. We know of no reported case where car service has been admitted as reasonable and an action brought to recover for demurrage paid for detention during inclement weather.

The leading Indiana cases, so far as we are able to find, are both unreported. In the Superior Court of Tippecanoe County, April, 1895, *Lafayette Lumber Company v. C., C. & St. L. Ry. Co.* This case was an action for replevin for a carload of lumber; action brought when car service claimed to be due amounted to \$17. The plaintiff claimed that there was a discrimination in that coal and coke were allowed a longer time than lumber, and further, that at other stations car service was not enforced. The case was decided by Judge Everitt, who held that the free time allowed for unloading is reasonable, and that there was no discrimination shown in favor of coal dealers



as against lumber dealers, and that rules could be enforced at one point and not at adjoining stations without discrimination. In the Circuit Court of St. Joseph County, September, 1903, *Miller & Terre Haute v. Logansport Railway Company*. This case is also unreported. The case held, in a suit of replevin for the lumber, that the carrier was entitled to the return of the lumber, thereby sustaining the doctrine of demurrage.

As the law of car service comes from shipment by water, it is likely that a case of the kind submitted might be determined upon the law relating to demurrage upon vessels. These contracts frequently provide "working days," "weather working days," "days" and "running days." The term "working days" means days during which work is done at the particular port (*Houge v. Woodruff*, 19 Fed. 136). "Working days" means running or calendar days on which work is done, not necessarily days on which work can be done. It excludes Sundays or legal holidays, but does not exclude rainy or stormy days. (*The Cyprus*, 20 Fed. 144; *Sorensen v. Keyser*, 2 U. S. App. 301; *The India*, 2 U. S. App. 87.) "Weather working days" is a broader term, meaning those days when the weather is such as to permit the work of loading or discharging. "Days" and "running days" mean consecutive calendar days.

#### **Milling-in-Transit Discrimination**

*To the Editor of Freight:*

SIR—We have just subscribed to *FREIGHT* and we write to you about the milling-in-transit privileges granted by a number of railroad companies. This is not done in New Jersey at all, but New York State shippers—Buffalo, Binghamton, Olean, etc.—come into New Jersey with their milling-in-transit privileges and work a great injustice to New Jersey corporations like ourselves.

It seems to us that this is contrary to the rules of the Interstate Commerce Commission and that it should not be allowed. We should like to have your opinion on it, to see if it would be possible to have the Interstate Commerce Commission take up the question. If this is not possible, maybe we could get a bill through the New Jersey State Legislature compelling the railroad companies to collect local rates from the Jersey line to destination in New Jersey, which would stop the custom effectually.

We estimate that if these houses did not have this privilege at all our firm could do at least 40 per cent. more grain business in bags from Newark than we are able to do at the present time.

Trusting that we may have a reply at your early convenience, we are,  
Yours very truly,

WILKINSON, GADDIS & Co.

NEWARK, N. J., April 16, 1906.

The latest utterance of the Interstate Commerce Commission regarding milling-in-transit is to be found in the case of *Koch v. P. R. R.* (10 I. C. C., 675). In that case the Commission said: "The shippers are not entitled as a matter of right to mill grain in transit and forwarding the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination (*Diamond Mills*

*v. B. & M. R. R.*, 9 I. C. C. 311), but allowance of the privilege by a carrier to shippers in one section must be without reasonable prejudice to the rights of shippers in another section served by its line."

In the case just cited, there was no sufficient evidence before the Commission to warrant a finding that there was a reasonable prejudice to the rights of the shippers at Harrisburg because milling-in-transit rates prevail west of Pittsburg. An early case relating to stoppage-in-transit and forwarding to ultimate destination at the through rate, in order to benefit the shipper at first destination—a somewhat similar custom—is found in *Crews et al. v. R. & D. R. R. Co.* (1 I. C. C. 401). In that case the Commission held that it had "no authority to require the defendant to concede the privilege sought for, corresponding to that of milling-in-transit."

In the case of *Cowan v. Bond*, 39 Fed. 54, the Court held that it was not an unlawful discrimination, under Section 2, Act to Regulate Commerce, for a carrier to receive cotton from a shipper, having it compressed en route and reship to final destination at a rate equal to the published through rate, provided all parties were entitled to the same privilege.

#### **Elements in Rate Making**

*To the Editor of Freight:*

SIR—Please advise me what elements are considered in determining reasonable rates.

E. O. HITCHCOCK.

MEADVILLE, Miss., April 7, 1906.

Independent of rates made "by instinct," or reasonable rates made "for a reason," the elements which should be considered in determining reasonable rates are given by Snyder, "Interstate Commerce Act," as follows:

(1) Amount of through and local business; (2) bonded debt; (3) bulk; (4) character of commodity; (5) comparison of rates; (6) competition; (7) consequences of rate changes; (8) cost of production; (9) cost of service; (10) cost of local business; (11) distance; (12) dividend on capital stock; (13) empty cars; (14) fixed charges; (15) former rates; (16) geographical situation; (17) initial expense; (18) market cost; (19) operating expenses; (20) other articles consumed; (21) population along the line; (22) proportion to local traffic; (23) relative reasonableness of rates; (24) relative amount of through and local business; (25) return loads; (26) revenue; (27) rates prima facie; (28) risk; (29) special train service; (30) storage capacity; (31) unsettling of rates; (32) use to the public; (33) value of freight; (34) volume of business; (35) weight.

The elements which enter into the computation as to the fixing of reasonable rates, according to Mr. Justice Harlan, in *Smyth v. Ames* (169 U. S. 466, 546), are to be found in the following excerpt from the opinion:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged

by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statutes, and the sum required to meet the operating expenses, are all matter for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

### Rates on Boots and Shoes to Atlanta

*To the Editor of Freight:*

SIR—I understand that a suit was brought some time since in one of the courts concerning the rates on boots and shoes from New York to Atlanta. Can you advise me the particulars of this suit?

J. E. ANDREWS.

WASHINGTON, D. C., April 21, 1906.

The cases to which you refer are doubtless the case of Kiser et al v. Southern Ry. and Waxelbaum v. Central of Georgia et al. The rates on boots and shoes from New York, Boston and other places to Atlanta have been as high as \$1.45 per 100 pounds. Some years ago the rates were reduced, to Atlanta, to 93 cents and to Macon, 85 cents. In April, 1905, the carriers gave notice of an advance. Bills were filed in the United States Circuit Courts stating that such an advance in rate would result in unreasonable and unjust rates; that the raising of the rates offended the Constitution of the United States, the laws of Congress and the Interstate Commerce Act and amendments thereto. The bills were filed April 29, 1905, one before Judge Speer and the other before Judge Newman. A rule to show cause and a restraining order was granted in each case ex parte on the date named. There has been considerable testimony taken in both cases, and it is said that the questions involved will be disposed of in the near future. The jurisdiction of the court was not raised. During the suit, under the operation of the restraining order, dealers in boots and shoes are paying the rates of 93 cents to Atlanta and 85 cents to Macon. It should be noted that these proceedings are brought under the general equity powers of the United States courts.

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**"If the subscription price of FREIGHT was \$25 a year, I should consider it most reasonable. It is worth much more than that to me."**  
**—A Subscriber.**

### C., B. & Q. FINED FOR GRANTING REBATES

The Chicago, Burlington & Quincy Railroad, Darius Miller and Claude G. Burnham, officials of the road, were found guilty in the Federal Court in Chicago of granting rebates in violation of law.

The railroad corporation was fined \$40,000 and the two officials \$10,000 each.

Judge Bethea in passing sentence said:

"Most of the suggestions made by counsel for the defendants apply to the law making power, and not to the enforcement of the existing laws. It may be true that the law should be different, but I think it the duty of the court to enforce the law as it stands, and I must look at it in that light.

"There is too much practice in this country of people obeying what law they please, and not obeying them all. I think there are circumstances in this case which will prompt me to assess a heavy fine against the individuals to prevent them from repeating this offense and causing others to hesitate from following their example.

"It is not for me to say that a fine will accomplish this. If there was a provision for imprisonment in the penitentiary, much more in that way might be accomplished.

"The sentence of the court will be that Mr. Miller will be fined \$10,000, Mr. Burnham \$10,000 and the corporation \$40,000 and the costs of suit. The defendants will stand committed until fines and costs are paid."

The fine was paid at once, the defendants going to the office of United States Marshal Ames, where a check was made out for the full amount of the three fines. Under the law the court could have assessed a fine of from \$1,000 to \$20,000 under each of the six counts in the indictment.

### Freight Shippers' Guide

The industrial department of the Delaware & Hudson Railroad, through W. A. Moyer, industrial agent, has issued a freight shippers' guide which will prove of great value to manufacturers and shippers. It contains a list of firms located on the lines of the Delaware & Hudson Company, and is designed to increase the interchange of all commodities between local points on the Delaware & Hudson Railroad.

### Biggest Freight Car on Earth

The biggest freight car in the world is being constructed in the St. Paul railroad shops at Milwaukee. The largest cars at present are of 100,000 pounds' capacity and are looked upon as monsters. The new car will have a capacity of 200,000 pounds. It is being built to transport a 90-ton section of a base for a blast engine which is being shipped to Bethlehem, Pa. The car is 41 feet long, has four instead of two trucks, and sixteen instead of eight wheels.

## STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

THE United States Supreme Court has rendered a decision involving the Texas demurrage law and held the enactment to be unconstitutional. The law provides that "whenever the owner, manager or shipper of any freight of any kind shall make application in writing to any superintendent, agent or person in charge of transportation, to any railroad company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship freight, it shall be the duty of such railway company, receiver, trustee or other person in charge thereof to supply the number of cars so required, at the point indicated in the application within a reasonable time thereafter, not to exceed six days from the receipt of such application"; failure to supply cars is made punishable by a penalty of \$25 per car per day; and the law is "not to apply in cases of strikes or other public calamity."

A shipper of livestock made application for seventeen cars and they were one day late in arriving. He sued to recover the penalty of \$25 per car per day and damages. A judgment was given him for \$475 by way of penalty and \$500 for damages. This judgment was affirmed by the Court of Civil Appeals of Texas. The opinion of the Supreme Court was rendered by Mr. Justice Brown. From the opinion the Chief Justice and Justices Harlan and McKenna dissent; Justice White took no part in the decision of the case.

The shipment was an interstate one, and after stating the facts of the case the court says:

"The defense was that this statute was not applicable to demands made for the cars to be sent out of the State and to be used in interstate commerce; and as the shipment was intended for Oklahoma the act did not apply, and the defendant was not liable. The question is, whether the statute, applied as it is by the Texas court to interstate shipments, is an infringement upon the power of Congress to regulate commerce."

\* \* \*

"The exact limit of lawful legislation upon this subject cannot in the nature of things be defined. It can only be illustrated from decided cases, by applying the principles therein enunciated, determining from these whether in the particular case the rule be reasonable or otherwise."

\* \* \*

"While there is much to be said in favor of laws compelling railroads to furnish adequate facilities for the transportation of both freight and passengers, and to regulate the general subject of speed, length and frequency of stops, for the heating, lighting and ventilation of passenger cars, the furnishing of food and water to cattle and other live stock, we think an absolute requirement that a railroad shall furnish a certain number of cars at a specified day, regardless of

every other consideration except strikes and other public calamities, transcends the police power of the State and amounts to a burden upon interstate commerce. It makes no exception in cases of a sudden congestion of traffic, an actual inability to furnish cars by reason of their temporary and unavoidable detention in other States, or in other places within the same State. It makes no allowance for interference of traffic occasioned by wrecks or other accidents upon the same or other roads, involving a detention of traffic, the breaking of bridges, accidental fires, washouts or other unavoidable consequences of heavy weather.

"A dereliction of the road in this particular, which may have occurred from circumstances wholly beyond the control of its officers, is made punishable not only by damages actually incurred by the shipper in the detention of his stock, but in addition thereto by an arbitrary penalty of \$25 per car for each day of detention. The penalty which was assessed in this case, though the detention was only for one day, amounted to nearly as much as the damages, and might in another case amount to far more.

"While perhaps the road may have no right to complain of that portion of the statute which assumes to provide for its own protection, it is illustrative of its general spirit that, if the shipper does not fully load his cars within forty-eight hours after their arrival, he shall forfeit \$25 for each car, or if the consignee shall fail to unload them within forty-eight hours after their delivery, at the place of consignment, which in the case of interstate shipments would be in another State, he shall also forfeit \$25 per day for each car unloaded

"Although the statute in question may have been dictated by a due regard for the public interest of the cattle raisers of the State, and may have been intended merely to secure promptness on the part of the railroad companies, in providing facilities for speedy transportation, we think that in its practical operation it is likely to work a great injustice to the roads, and to impose heavy penalties for trivial, unintentional and accidental violations of its provisions, when no damages could actually have resulted to the shippers.

"Although it may be admitted that the statute is not far from the line of proper police regulation, we think that sufficient allowance is not made for the practical difficulties in the administration of the law, and that, as applied to interstate commerce, it transcends the legitimate powers of the Legislature."—The Houston & Texas Central Railroad Co. et al v. Mayes. U. S. S. C., No. 198, October term, 1905.

### The Hay Case Argued

The case of the Interstate Commerce Commission v. L. S. & M. S. Ry. Co., known as the Hay case, was

recently argued before the Supreme Court. L. A. Shaver and John G. Carlisle appeared for the Commission, while George C. Greene, Adelbert Moot, E. J. Rich and G. W. Wall appeared for the carriers.

The case originates in the change of classification of hay, in car lots, from sixth class to fifth class. By an order in 1902, the Commission ordered the classification of hay changed from sixth class. The Circuit Court for the Northern District of Ohio, in a proceeding brought by the Commission to enforce its order, held that the order was one beyond the power of the Commission to make. From this decision the Interstate Commerce Commission appealed.

### Right of Carrier to Its Freight

The Controller of the Currency has recently decided an interesting case concerning the right of a carrier to its freight. The case arose in a shipment of 104 mules by water, from New Orleans to Colon, and the sum agreed to be paid for the transportation and feed of the animals was \$2,600. The contract stated that the freight is considered to be due, whether earned or unearned. En route, one of the animals died and was buried at sea. The Canal Commission, under whose jurisdiction the shipment was made, retained \$25, claiming that, as the mule died en route, the freight was not due the company. Appeal was taken to the Controller of the Currency, who decided that, as the sum specified was a lump sum, and that the contract specifically stated "no portion is to be retained in case of the death, or other liability of said mules, but is to be returned by said party of the first part, earned or unearned," the full sum agreed upon in the contract must be paid.

### IMPORTANT DECISIONS IN BRIEF

There is a presumption that goods which arrive at destination damaged have been damaged on the route of the final carrier and in the absence of proof showing that the goods delivered by the final carrier to the consignee were damaged while in possession of the initial carrier, the latter is not liable for the loss. The court, quoting from 6 Am. & Eng. Ency. Law, 2d Ed., 625, said: "Where the last carrier delivers the shipment to the consignee in an injured condition, the presumption is that the injury occurred on its line. A consignment in good order when delivered to the initial line is presumed to remain so." And also from page 651, 652, in the case of a mere injury to the goods: "In case of a mere injury to the goods, no failure to deliver being shown, if the last carrier is sued for the damage resulting from the injury, the burden of proof will be upon it to show that the goods were delivered by it in the same condition in which they were received by it, the presumption being that the goods remained in the same state when delivered to it as when originally shipped." (*Berkowitz v. C., M. & St. Paul Ry. Co.*, 96 N. Y., Supp. 825.)

The Supreme Court of South Carolina recently had before it some important questions concerning the limitation of liability. The action arose for the loss of a horse which died by reason of injuries received in transit from a point in Georgia to a point in South Carolina. Suit was brought for the value of the horse and a penalty of \$50, as provided by the statute for failing to adjust and pay the claim within

ninety days. It appeared that the contract limiting the carrier's liability was not signed by the shipper until after the horse was injured and then on an agreement that his signature should not affect his rights. Upon such a statement of facts it was held that the limitation of liability did not affect the shipment. (*Frasier v. C. & W. C. Ry. Co.*, 52 S. E. 964.)

A carrier of livestock assumes the same responsibility for the transportation thereof as it does for the carriage and delivery of other property, except injuries which result from the nature, habits, propensities, viciousness or other inherent qualities of the animals. (*L. & N. Ry. Co. v. Smitha*, 40 Sou. 117.)

If a carrier retain goods in its possession for an unreasonable length of time, and during that time the goods be destroyed by the act of God, the carrier is nevertheless responsible. A case in point arose in the shipment of six bales of cotton, which were held by the carrier at the point of origin for eleven days. On the eleventh day a cyclone practically destroyed the cotton, and the defense of the carrier was that the loss was occasioned by the act of God. The court reviewed the decisions in several States where the question of liability has been answered both in the affirmative and negative. The court took the view laid down in the earlier New York cases: "That, where a carrier is intrusted with goods for transportation and they are lost, the law holds him responsible for the loss unless exempted by showing that the loss was caused by the act of God or the public enemy. And to avail himself of such exemption he must show that he was free from fault at the time. In other words, when there is an unreasonable delay on the part of the carrier in forwarding the goods and they are destroyed by the act of God during this delay, that he is not excused for the reason that it was by his fault that they were exposed to the peril." (*A. G. S. R. Co. v. Quarles*, 40 Sou. 120.)

Where one shipped a carload of hogs over two carriers and at destination it was found that eleven were missing, and also that there was a defect in the car in which they were shipped, it was held that there was a presumption that the animals escaped while in the hands of the final carrier. It was claimed, however, by the plaintiff, that as the initial carrier had failed to furnish a good and sufficient car, the initial carrier was nevertheless liable, even though the contract of shipment undertook to exempt it (the initial carrier) from any loss while the car was in the possession of the connecting line; and, notwithstanding the fact that by the terms of the contract the shipper agreed to undertake to inspect the car for himself and if found insufficient, to notify the carrier and demand another. The contention of the plaintiff was sustained by the court and judgment in favor of the plaintiff was awarded against the initial carrier. (*Jones v. St. L. & S. F. R. Co.*, 91 S. W. 158.)

Where one shipped goods by express and the receipt for same contained a stipulation limiting the liability of the express company so that it acted as forwarders only, and could not be held liable for loss or damage to the property while conveyed by the railroads, nor in any event liable for a sum exceeding \$50, it was held by the Supreme Court of Mississippi that both limitations were in violation of public policy. In disposing of the case the court said:

"The stipulations in the contract that the negligence of the railroad company could not be imputed to the express company, and that the liability of the express company should be only \$50, no matter how great the value of the package lost, are both in plain violation of the public policy of this State. *Telegraph Co. v. Wells*, 82 Miss. 733; *Hughes v. Pa. R. R. Co.* (Pa.) 97 Am. St. Rep. 713, and note; *Bank of Kentucky v. Adams Express Co.*, 93 U. S. 174. See, specially, the note to *Chicago R. R. Co. v. Calumet, etc., Farm (Ill.)* 88 Am. St. Rep., at page 101." (*Sou. Exp. Co. v. Marks*, 40 Sou. 65.)



## HEARINGS AND RULINGS BY STATE COMMISSIONS

### CONNECTICUT

As a result of the hearing before the Railroad Commissioners at Hartford on the proposed trolley extension to Lake Quassapaug and Woodbury by way of Robbins street, there was established a general understanding by those present that a basis for a compromise had been reached through conciliatory propositions on the part of the Connecticut Railway & Lighting Company to which Mayor William E. Thomas for the city of Waterbury could see no serious objections on the part of the municipality. The proposition developed in connection with the railway company's appeal from the original conditions imposed by the city and was offered in anticipation of a settlement of the difficulties that have been incurred over the building of the road by Col. L. F. Burpee, who in conjunction with Allan W. Paige, general counsel, represented the interests of the Connecticut Railway & Lighting Company.

### FLORIDA

The Supreme Court of Florida, in an opinion by Justice Whitfield, has made another important contribution to the line of adjudications by that tribunal sustaining and defining the powers of the Florida Railroad Commission, as contained in the act of 1897, creating the commission, and the amendatory act of 1899.

The present decision is in the mandamus proceeding of the State of Florida ex. rel., William H. Ellis, Attorney General, relator, vs. the Atlantic Coast Line Railroad Company, a corporation, respondent, which was instituted by the railroad commissioners through the Attorney General, as the law directs, wherein the railroad commissioners sought to compel obedience by the Atlantic Coast Line Railroad Company to an order made by the commissioners on November 11, 1905, requiring the Atlantic Coast Line Railroad "to haul and distribute between its stations on and along its line of railway in the State of Florida for the Postal Telegraph-Cable Company, its men, poles, wire and other material for the maintenance, operation, repair, construction and reconstruction of all of its line of wire." The order also undertook to fix the charges which the Atlantic Coast Line might charge the Postal Telegraph-Cable Company for such service.

The order arose out of a complaint by the Postal Telegraph-Cable Company, that the Atlantic Coast Line Railroad was performing a like service for the Western Union Telegraph Company, and refused to perform it for the Postal Telegraph-Cable Company, and that this constituted an unlawful discrimination which the railroad commissioners were legally empowered to prevent. The Coast Line refused to obey the commission's order, and the commissioners applied for and secured from the Supreme Court an alternative writ of mandamus to compel obedience by the railroad to the order.

The central points emphasized in Justice Whitfield's opinion are that the prevention of discriminations as between shippers is one of the chief purposes of the railroad commission law and the necessity of exercising care in the framing of the railroad commission's orders to the end that these orders themselves shall not work a discrimination as between shippers.

### GEORGIA

Representatives of the Atlanta & Birmingham Railway and of the Georgia Southern & Florida appeared before the railroad commission in pursuance of the order requiring them to show cause why they should not submit to a reclassification calculated to reduce local freight rates. The Atlanta & Birmingham is in "Class D." and is allowed to charge 30 per cent. in addition to the standard tariff. The Georgia Southern & Florida is in "Class C." and is permitted to charge 25 per cent. in excess.

H. C. McFadden, general freight agent, and Morris Brandon appeared for the Atlanta & Birmingham Road. S. F. Parrot, vice president, and John M. Cutler made argument for the Georgia Southern & Florida. The gist of the railroad argument was the contention that so much money had been expended in improvements that a reduction in freight rates would amount practically to confiscation of property, not allowing a fair per cent. of profit on the money invested.

Commissioners J. M. Brown and Warner Hill heard the arguments, Chairman Stevens being ill at his home in North Georgia.

This case originated with the railroad commission. It probably will not be decided by the commission until Mr. Stevens is able to return to his duties.

### INDIANA

By ordering a reduction of 30 cents a ton in the coal rate between the Linton coal fields and Stinesville, Ind., the Indiana Railroad Commission decided one of the most important cases that has come before it recently. The rate has been 80 cents a ton for a haul averaging 59 miles. The commission ordered it cut to 50 cents. The ruling was made in the case of the Romona Oolitic Stone Company against the Chicago, Indianapolis & Louisville Railroad Company, but its importance will be measured by the general effect it has on the coal rates and not by the single case at issue.

The Romona Company a few days ago filed a civil suit in the Marion County courts to collect money alleged to have been paid to the railroad company in overcharges.

### IOWA

Two new classifications of freight rates have been recently made which will benefit Davenport shippers to considerable extent. One of these was made by the Iowa Railroad Commission and is now in effect, while the other, which is of more importance, has been made by the Western Freight Association, and went into effect April 1. The change, which was brought about at the meeting of the railroad commission held at Des Moines in January, has been in effect for some time, and nearly all of the shippers throughout the State are being benefited to a considerable extent. While the rates remain the same, the classification has been changed so that there is quite a reduction, a large number of articles that were formerly designated as second class freight now being in the third class, while other articles that were in the first class have been put in the second class. This reduction does not affect freight that is shipped out of the State, however.

The other new classification which has

been made will affect what is known as the Western District, which takes in the territory west of the Indiana-Illinois State line, east of the Missouri River and north of the Ohio River, comprising the States of Wisconsin, Minnesota, Illinois and Iowa.

### KANSAS

Carr W. Taylor filed the cattle rate suit before the Board of Railroad Commissioners, the preparation of which was announced some time ago. The complaint is signed by B. L. Stephens, Charles Wagner and L. G. Pike, the board of commissioners of Clark County, and the case is directed at the Atchison, Topeka & Santa Fé Railroad Company. The complaint is rather voluminous, its burden being that cattle rates from points in Clark County are excessive and out of all proportion to those charged for like distances in Iowa.

The complainants say that Clark County is one of the largest cattle producing counties in the State; that there is annually kept upon its pastures an average of 50,000 head of cattle from Englewood, Ashland and the other shipping points located on the Englewood Branch in Clark County, and from Mineola, a station on the Chicago, Rock Island & Pacific, amount to 1,000 carloads each year; that the annual shipment of cattle at the present time from these stations is considerably in excess of the annual shipments made the years following the construction of the Englewood Branch and of the Chicago, Rock Island & Pacific.

The allegation is then made that until October, 1903, the rates charged on standard cars from Ashland and Englewood to Kansas City were \$35 and \$38.50 for 36 foot cars. In 1903 the rate is said to have been arbitrarily raised to \$52.80 for a minimum car of 22,000 pounds.

### KENTUCKY

The investigation of the freight rates charged by the railroads operating in the State was resumed before the Kentucky Railroad Commission. It appears now as if the investigation would end in a general reorganization of the freight rates throughout the entire State. The commission has probed deeply into the rates now charged by the railroads, and it is believed that sufficient evidence has been secured to warrant such steps on the part of the commission.

The first clash between the new inter-urban system of the L. & N. and the Louisville & Eastern Electric Line is prefaced in notice, which has been filed with the State Railroad Commission by Percival Moore, president and general manager of the electric line, to the effect that complaint probably will be made against the new passenger fares to be instituted by the L. & N. The letter, in which Mr. Moore sets forth these facts, has been sent to Moses R. Glenn, secretary of the commission, who is requested to place the matter before the commissioners.

### LOUISIANA

First blood in the suit of the Railroad Commission of Louisiana et al., appellants, v. the Texas & Pacific Railroad Company et al., appellees, was drawn in favor of the railroad companies when the Federal Circuit Court of Appeal handed down a decision sustaining the judgment of the trial court in its issuance of a preliminary injunction to restrain the railroad commission from enforcing its ruling that the Texas & Pacific, Kansas City Southern and Iron Mountain rail-

roads were violating its order in charging an export rate on logs, staves and other forest products from points on the three lines, within Louisiana, to New Orleans. However, the decision is not intended to be a final adjudication of the case, which is yet to be heard upon its merits, and by its decision the Court of Appeal simply declared the court which issued the restraining order, or injunction, to be of competent jurisdiction. The opinion was handed down by Judge McCormick.

The Louisiana Railroad Commission authorized the use of the Western classification No. 40 to supersede Western Classification No. 39, which was adopted by the commission after a prolonged consideration several months ago. The new Western classification No. 40, which is to apply to all railroads operating in Louisiana west of the Mississippi River, contains no increase in rates over the previous classifications, but has several reductions, and a large number of additions.

### MASSACHUSETTS

The commissioners gave a hearing on the petitions of the South Bay Wharf and Terminal Company for an adjustment of the rate to be charged by it and the New York, New Haven & Hartford Railroad in this city and of 240 shippers of freight for a reduction in the rate of \$2 for shifting now charged.

Col. J. H. Benton appeared for the New Haven Road, F. J. Stimpson for the South Bay Wharf and Terminal Company and Lewis D. Brandeis for the shippers. Colonel Benton, in answer to the petition of the shippers said the company has recently acquired a location fronting on Massachusetts avenue, containing about 15 acres of ground, which is to be used by the road as a freight yard, and they will therefore withdraw from their connection with the Terminal Company. He hoped, he said, to have the yard built and in operation in two or three months.

Mr. Brandeis said that his clients have no assurance that the hope of Colonel Benton will be realized. The road may take two, three or six months to complete their yard, but it has already been nine months since the condition was brought to their notice and not much has been done.

Edward S. Field, representing the Curtis & Pope Lumber Company, said his company had acquired holdings in the vicinity of the Terminal Company's property, on the representation that their freight yard was to continue in that vicinity. It would be a serious matter for his firm, he said, if the yard is changed to Massachusetts avenue, unless they are allowed a rebate.

The board took the matter under advisement.

### MICHIGAN

Railroad Commissioner Atwood ordered the Michigan Central to reduce passenger fares on the Detroit-Bay City and Jackson-Bay City divisions from 3 to 2½ cents per mile, and on the Jackson-Grand Rapids Division to 2 cents. Earnings on the latter division averaged nearly \$3,500 per mile last year, increasing 75 per cent. since the rate was reduced from 3 to 2½ cents a few years ago. The Pere Marquette and other competing roads must necessarily reduce fares to meet the Michigan Central's new rates.

### MINNESOTA

The principal feature in Western railroad circles in April was the rate hearing before the Minnesota Railroad and Warehouse Commission. The commission, after nearly two years' investigation, adopted a schedule of rates thought by them to be equitable and just.

President A. B. Stickney, of the Chicago Great Western, was the star witness, and he declared that if the railroads were forced to accept the rates proposed it would mean bankruptcy for them. He discoursed on rate making and rate earnings and showed how the earnings often fell far below the cost, and how the rate schedules now in force throughout the West were as low as they possibly could be and permit the railroads to operate on a business basis. He said it was the system as a whole that must be considered in making rate schedules.

The Chicago & Northwestern officials advanced the argument that there had been no complaint by shippers on its line, and that the making of new rates by the railroad commission, under the direction of the act of the last Legislature, was unwarranted.

Vice President Farrington, of the Great Northern, testified that the business of his road in Minnesota showed a decrease for the last two years of 11,000,000 tons. Commissioner Staples seemed unable to credit this information.

### MISSISSIPPI

The Supreme Court in the case of the Mississippi Railroad Commission v. the Yazoo & Mississippi Valley Railroad have decided against the commission. This suit was an effort on the part of the commission to enforce the order issued over two years ago requiring the establishment of a depot at Wilson Crossing, in the town of Lexington. Justice Calhoun read the decision of the majority of the court holding that the railroad commission was without power to require the railway company to maintain two depots in one town, or to designate the location of a station; that such a power is not contemplated by Sections 4309 and 4302 of the Code, and to so construe these statutes would be the setting of a dangerous precedent, for it could be magnified into a power of compelling a company to establish any number of depots in a community to suit sectional conveniences, and the law does not contemplate such a tyranny. Chief Justice Whitfield dissented.

The railroad commission has ordered that the following rule be adopted, effective at once: "That all freight depots of all railroads in this State shall be kept open for receiving and delivering freight from 7 a. m. to 6 p. m., Sundays and legal holidays excepted. That all orders in conflict with this rule be, and the same are hereby, repealed.

### MISSOURI

When the Missouri State Board of Railroad and Warehouse Commissioners, on March 5, reduced the rate on oil between Kansas City and St. Louis to 9 cents per 100 pounds, it was predicted that the rate ultimately would be fixed at 17 cents, and that such action would produce friction in the board. At a later meeting the commission established the rate at 17 cents, after annulling the 9 cent rate, and, as a result, discord was manifested.

### NEW JERSEY

Governor Stokes approved Senate Bill 91, the trolley freight measure, introduced by Mr. Wakelee. It is an amendment to the act relating to the carrying of freight or express matter by companies owning, leasing or operating street railways. In amending that act the new law says: "Provided further, That this act shall not prevent any such company or companies from carrying freight or express matter in and through any municipality of this State by and with the consent of the governing body of such municipality, and under such lawful restrictions and regulations as such governing body may by ordinance impose." The law takes effect immediately.

### VIRGINIA

The hearing before the corporation commission of complaints by the Richmond merchants of the inefficient handling of freight shipments gives emphasis to the remarkable progress of trade by Richmond in the last two years.

The only defense of the railroads is that they could not foresee the rapid extension of shipments, and that the volume has outgrown their facilities. One railroad representative testified that when the rapid increase commenced two years ago they thought it was a boom, but it has continued and regularly increased until almost constant congestion is the result.

### PERSONAL MENTION

BLOOD.—C. A. Blood has been made freight traffic manager of the Lehigh Valley Railroad.

BOWER.—L. F. Bower, formerly manager of the Electric Works of the Allis-Chalmers Company in Cincinnati, who was recently promoted to the position of comptroller of the company, has already assumed the duties of his new office, with headquarters at the general offices of the company in Milwaukee.

BURNETT.—H. C. Burnett has been made general freight agent of the Lehigh Railroad.

ECKLES.—E. T. Eckles has been appointed assistant general freight agent of the Nashville, Chattanooga & St. Louis at Nashville.

GITHENS.—J. N. Githens has been made general agent of the Iron Mountain system at Chicago.

HAMILTON.—H. C. Hamilton, New England freight agent of the Lehigh Valley, has been appointed division freight agent at Buffalo.

HENDRICKS.—John T. Hendricks, freight traffic manager of the Western Maryland Railroad, has been elected a member of the Baltimore Chamber of Commerce.

JARVIS.—T. N. Jarvis has been elected second vice president of the Lehigh Valley board of directors. He will have full charge of the company's freight, coal and passenger traffic.

MCQUEENY.—James B. McQueeny has been appointed acting general freight agent for the Brooklyn Rapid Transit.

WOOD.—John S. Wood, formerly division freight agent of the Lehigh Valley at Buffalo, has been appointed assistant freight agent of that company, with headquarters in New York. He assumes his new duties May 1.

WRIGHT.—George R. Wright has been appointed agent for the Central of Georgia Railway Company, at Jacksonville, Fla.

### TRANSPORTATION TOPICS THROUGHOUT THE STATES

#### ALABAMA

The Alabama Great Southern Railroad is adding to its freight depot facilities at Birmingham.

A new train service has been established between Atlanta, Birmingham and Shreveport via the Southern Railway and the Queen & Crescent route.

The Mobile, Jackson & Kansas City has opened a new freight depot at Mobile.

The Alabama Great Southern and the Cincinnati, New Orleans & Texas Pacific have placed equipment orders amounting to \$4,000,000. The order includes, 2,000 freight cars.

Pig iron manufacturers in Alabama are requesting the railroads to again take off the increase in freight rates which went into effect on March 1.

#### ARKANSAS

What promises to be the fastest fruit train ever run from any fruit growing section will be started from Van Buren about May 1, or when the shipment of strawberries in car lots begins. The train is expected to cover the 1,000 miles between Van Buren and Minneapolis in thirty-four hours.

The retirement of the Armour refrigerator car line from the Frisco and the introduction of the Santa Fé cars in its stead has already been followed by a reduction of \$10 per car in refrigeration charges and this, with a small reduction in freight charges, means a saving to the fruit shippers from Van Buren alone of more than \$10,000 on this season's shipments.

Five "red ball" freights on the Little Rock & Fort Smith Railroad of the Iron Mountain system have been annulled. A large part of the freight handled by the "red balls" consisted of coal cars loaded at the Arkansas mines and shipped South. Now that the mines have closed, this traffic has ceased and the balance of the work done by the fast freights will be handled by the local trains and occasional extras. All of the crews will remain on the pay roll, but the work will be divided between them so that each will be able to secure but a small check each month during the continuance of the order.

The Ozark Fruit Growers' Association has been organized by the strawberry growers of Southwest Missouri and Northwest Arkansas. It is expected that the shipments this year will show an increase of 25 per cent. over 1905.

#### CALIFORNIA

The committee appointed by the San Joaquin Valley Commercial Association to request the railroads to reduce the freight rate on crude oil to be used on county roads of this valley has received an answer from the Southern Pacific refusing to make the reduction and stating that similar requests have been received from counties all over the country and that many counties which have paid the regular rate would have cause for a charge of discrimination if the reduction should be granted other counties now.

Transportation companies with San Francisco terminals have agreed to apply coast terminal rates to Guaymas, Mexico, which is one of the three receiving points for American mining machinery and other commodities entering Mexico.

This action means that the railroads are practically allowing a reduction of 30 cents on mining machinery, and similar reductions on other classes of necessities, placing Colorado on the same basis as California in the Mexican trade. El Paso, Tex., Naco, Ariz., and Guaymas are the three important import points of Mexico through which mining machinery and supplies pass.

The fruit growers of Southern California thus far have not suffered by the recent decision of the United States Supreme Court in favor of the railroads in routing shipments. The ruling came too late to affect the Eastern market crop of this season.

An investigation of the crop situation shows returns of prices nearly 75 per cent. in advance of those of last year for citrus fruits. To March 29, 13,234 cars of fruit were shipped to the East. Of this amount 1,448 cars were lemons. Of this season's crop 10,000 carloads of fruit remain to be shipped, but prices show no change so far as the Eastern market is concerned.

At 5:15 on the morning of April 18 an earthquake shook San Francisco and was followed two minutes later by another one fully as violent. Fire followed and three-quarters of the city was destroyed, causing a loss of life of 1,000 and a property loss estimated at \$300,000,000. Within a week \$15,000,000 had been contributed to the relief of the stricken city—this in addition to the \$3,000,000 which the railroads contributed in free transportation of commodities. The relief work will cost the railroads which are in the system controlled by E. H. Harriman at least \$75,000 daily for thirty days. This would make a total of \$2,250,000. This sum, however, includes the cost to the railroads which deliver traffic to the Union Pacific at Omaha, including the Northwestern, the St. Paul, the Great Western, the Illinois Central and the Rock Island. The estimate for the Santa Fé, which has its own lines from Chicago to San Francisco, is at least \$25,000 daily, including the lines which turn over traffic to it at Chicago.

The contribution of the Gould system together with the lines which deliver traffic to it is estimated to be \$15,000 daily. Accordingly, it is said, the railroads are performing free of cost a service daily which has a commercial value of at least \$115,000, and this service will continue for at least thirty days.

These figures represent a dividend of nearly 4 per cent. upon a capitalization of \$100,000,000, or about the capitalization of the Harriman lines. The commodities transported free are all high class, and would take a very high rate, varying from \$1.25 to \$2 for 100 pounds from Chicago to the Coast. The relief trains were not running as ordinary freights, but upon passenger train or express train schedules, thus adding to the expense.

To transport a train of provisions from Chicago to San Francisco on a passenger train schedule would cost a shipper between \$9,000 and \$12,000. If the cars were loaded each with 40,000 pounds of provisions at a rate of \$1.25 for 100 pounds, it would cost \$500 a car, or \$10,000 for a twenty car train. The enormous amount of equipment which will be required to handle this traffic must be taken out of other service. In addition to the freight service, there was

the free passenger service which the railroads performed.

#### COLORADO

A committee of Denver shippers met the traffic executives of Western roads recently in Chicago. They complain that Missouri River jobbers can get goods from Chicago and ship them through Denver to Salt Lake and to points West and Northwest at a cheaper combination of rates than Denver can ship to the same points. For example, paper originating in Wisconsin and destined for Salt Lake can be shipped by the Missouri River jobbers for \$1.13 a 100 pounds as against the Denver jobbers' \$1.28. To Cheyenne the Kansas City man pays through Denver \$1.25, whereas the Denver merchant pays \$1.70. On matting from Yokohama, also, the railroads are said to haul the product nearly 1,000 miles farther with an allowance of 82 cents in favor of the Missouri River jobbers. The same discrimination is alleged through Denver to Idaho and Oregon. The Denver men declare that if relief is not afforded them they will go to the Interstate Commerce Commission and to the courts.

The practice of underbilling freight will be submitted to a committee to be composed of three representatives of the Western trunk lines, three of the central freight lines, three for the trunk lines, two for the Colorado roads and two for the New England roads. This committee will recommend rules to be adopted by all railroads in order that uniformity may be reached.

All of the coal mines belonging to the Colorado Fuel & Iron Company in Fremont County will be worked at full blast indefinitely. The output will be over 2,000 tons a day.

Colorado & Southern will erect a new freight depot at Denver and contemplate various improvements in Colorado and Texas calling for an expenditure of over \$1,000,000.

#### CONNECTICUT

The New York, New Haven & Hartford Railroad Company intend to make Bridgeport the largest freight centre in Southern New England. All the heavy freight shipments from the Naugatuck Valley, including Waterbury, which are now shipped by rail direct to New York or from New Haven or Bridgeport by water combined, and all of the freight which goes over the Berkshire Division is to be centralized in Bridgeport and shipped to New York by water.

The Bayonne & New Haven Transportation Company, whose offices are at 114 Liberty street, New York, will establish a freight line between New Haven and New York. The company will compete with the New England Navigation Company as well as the Starin line for business between this city and New York. A rate war may result.

The New York, New Haven & Hartford will construct a relief line between a point on the main line between Greenwich and Port Chester, through Ridgefield to a point on the New England Railway just west of Danbury station. The new line will be about 30 miles in length and will cost approximately \$2,500,000. The object of the construction of this line, which will be double tracked, on low grades and light curvatures, is to shorten the main line of the company's road into the Berkshires and to turn a considerable portion of the freight business from the

New York Division to the New England Railroad, leaving the New York Division free for handling the passenger business of that line.

The Connecticut Railway & Lighting Company, when it completes its connecting link between Waterbury and Ansonia, will establish a trolley express in the Naugatuck Valley.

The Hartford Business Men's Association is complaining of the delay in receiving freight at the local depot.

### DELAWARE

The freight business of the steamboat lines out of Wilmington is very heavy. All the boats are taxed to their full capacity.

Owing to the addition of twenty freight trains on the Pennsylvania Railroad between Washington and Philadelphia there will be an enlargement of the freight yards at Edgemoor.

Fruit growers of lower Delaware are becoming anxious over the possibility of a shortage of refrigerator cars, which must be relied upon to rush the fresh fruits northward when the hot weather comes.

### FLORIDA

Nearly 18,000,000 feet of pine lumber was exported from Jacksonville during March.

All the freight depots in Jacksonville have adopted the Saturday half holiday rule.

A company has been organized in Ocala to place a line of boats on the Ocklawaha River, principally for the purpose of transporting naval stores.

St. John's River Terminal Company will spend about \$150,000 in Jacksonville for improved facilities.

### GEORGIA

Lumber merchants of Brunswick ask for a change in the recent demurrage rules promulgated by the Southeastern Car Service Association. The new rules practically cut the free time for unloading from five days to two days.

It was expected that the construction of the freight depot of the Louisville & Nashville at Atlanta will be done in a few weeks. It will cost \$300,000.

Delivery to the Southern Railway of its order for 8,000 cars has been begun at the rate of about forty cars per day.

Georgia Marble Retail Dealers' Association complains that the Railroad Commission has allowed the Louisville & Nashville to charge a rate 25 per cent. above the regular tariff on shipments of Georgian marble.

A steamer line from Savannah to Havana and Bahia Honda will shortly be established, according to report. Andreas Moynelo, of Savannah, and J. Condict Smith, of New York, are interested in the project.

The Macon Chamber of Commerce has arranged for putting a line of steamers on the Ocmulgee River from Macon to the sea.

The Columbus Board of Trade is to have a rate and statistical clerk, whose duty it shall be to compile statistics regarding Columbus railroad rates, institute comparisons between Columbus and other places in the same class commercially and point out such discriminations against Columbus in the way of freight rates that may be found to exist. Charles B. Woodruff, who is familiar with the freight rate situation in Georgia territories, has received the appointment.

Riverside Mill has complained to the Interstate Commerce Commission against the Southern Railway Company, At-

lantic Coast Line Railroad Company, Charleston & Western Carolina Railway Company, Seaboard Air Line Railroad Company, Central of Georgia Railroad Company, Clyde Line Steamship Company, Old Dominion Steamship Company, and Ocean Steamship Company of Savannah. The petition has been drawn up by Attorney R. J. Southall. It is alleged in the petition of the plaintiff that they are being made to pay 4 cents a hundred pounds more now than they had to pay several years ago. The petitioners state that they ship goods to many Northern points, and on December 15, 1897, and ten years prior thereto, the company had a rate of 37 cents charged them, and that on December 16, 1897, there was a change made in the rate, and the amount was put up to 39 cents, and on March 11, 1900, the rate was put up to 41 cents. That as further evidence of such unreasonableness it is alleged, upon information and belief, that considerable factors in causing such increase are exorbitant terminal charges exacted at Savannah, Charleston and Norfolk, and an excessive charge made for marine insurance. The plaintiff claims that they have lost several thousand dollars in the freights from Augusta, and claim, that the railroads and steamship companies have violated the act of the Interstate Commerce Commission.

The Chamber of Commerce of Culoden has asked the Macon & Birmingham Railroad for better freight service.

The Southern Millinery Jobbers and Manufacturers' Association are co-operating with the efforts of the Millinery Association to secure an extension of time from May 1 to July 1 on all express packages weighing over 20 pounds, not in wooden cases or crated. An additional resolution was to the effect that if there should be any sort of restrictions, they should be placed on the size of the corrugated case rather than the weight.

### ILLINOIS

Information has been given to the Interstate Commerce Commission regarding a case of false billing on a shipment of wheat by which plan it was proposed to defraud several Eastern roads out of at least \$1,700. One of the most prominent grain firms in Milwaukee and a Chicago railroad man carried out the scheme of false billing.

The shipment was 100 carloads of grain from Milwaukee, destined to New York over several lines east of Chicago. The largest consignment to any one line was of sixty cars. The grain, instead of being billed as coming from Milwaukee, was billed as originating at St. Paul. It was brought to Chicago, where it was transferred to the Eastern roads by the Chicago Junction Railway Company.

In the information that has gone to the Commission the names of the grain firm and of the railroad man charged with having done the false billing are given. This was done on a promise of the Stubbs Committee and of the Eastern Committee to give information of any departure from the strict letter of the law by the railroads or by the shippers.

It appears that the false billing was made with a view to defrauding the Eastern roads out of about 2½ cents per 100 pounds. Grain coming from Milwaukee takes the Chicago rate east, whereas grain shipped from the Twin Cities destined for export carries a cheaper rate east from Chicago by about 2½ cents. This would amount to about \$17 on a carload.

When the grain reached Hammond one of the Eastern railroad agents noted a peculiarity in the billing, and his sus-

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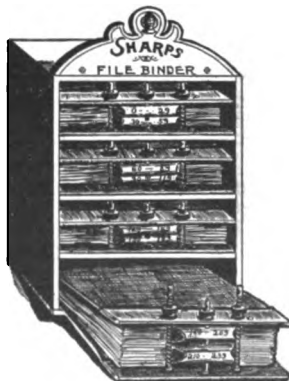
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picious were aroused. He notified his main office, and the grain inspectors whom the railroads employ were placed on the case. As soon as an inspector traced the shipment to the consignor at Milwaukee there was consternation. The shipper threw up his hands and pleaded for secrecy, gladly paying the additional compensation due the Eastern roads. There is said to be so much of this sort of thing going on that the railroads are determined that the Commission shall have the opportunity to see what they can do to discourage the fraud.

Representatives of the Chicago Commercial Association appeared before the executive officials of the Western roads to support their application for a reduction of the St. Louis differential on business for Missouri River points and the Southwest. After hearing their argument the railroad officials took the subject under advisement and instructed W. H. Hosmer, statistician of the Western trunk lines, to check up the claims of the shippers. The Commercial Association was represented by Franklin MacVeagh, J. T. Farwell, Jr., J. T. Pirie, James Simpson, A. A. Sprague II, E. S. Conway, S. J. Kline, J. Edmund Strong, J. J. Wait, A. D. Jones, and H. C. Barlow, general manager of the association. Mr. Barlow presented the claims of the Chicago shippers, and was supported by Mr. MacVeagh, Mr. Farwell, Mr. Kline and Mr. Wait.

The Peoria & Pekin Union and the Peoria & Pekin Terminal have decided to raise the rates between Peoria and Pekin.

### INDIANA

The Haskell & Barker Company are to furnish 100 steel ballast freight cars to the Rutland (Vt.) Railroad by June 1, at a cost of \$69,500.

The Indiana Union Traction Company has inaugurated through freight service between Indianapolis and Fort Wayne.

The new freight depot of the Pennsylvania at Indianapolis will cost about \$400,000.

### IOWA

Farmers along the electric line between Nevada and Newton insist that they be granted freight loading privileges every mile, while the company contends that switches every 2 miles is all they will be willing to grant.

Illinois Central is to build a new freight house at Sioux City.

Governor Cummins is expected to veto the "long and short haul" bill which created so much uproar in the Legislature.

### KANSAS

A party of capitalists recently left Kansas City with President A. E. Stillwell over the Kansas City, Mexico & Orient. The party visited the City of Mexico.

The Farmers' Co-operative Shipping Association has adjusted its financial troubles and will resume activity. The new board of directors consists of H. H. Shaw, Argonia; Frank Wright, Billings, Okla.; H. R. Signor, Winfield; R. Milton, Stafford; T. C. Snodgrass, Waldo; J. G. Goings, Minden, Neb.; J. A. Mermans, Gorham; M. G. Thompson, Anthony. F. Englehard, of Rising City, Neb., is general manager.

### KENTUCKY

Efforts were made at the joint conference of the Southeastern and the Southeastern Mississippi Valley Freight Association in Louisville Ky., to secure the reinstallation of the free transportation arrangements for attendants on stock shipments. All associations north of the Ohio River, and practically every other association in the United States, require that an attendant accompany the cars in which stock are shipped. The conditions are somewhat different in the South, however, different methods of classification being used and cheaper rates being granted south of the Ohio River. The Northern classification fixes the weight of a horse at 4,000 pounds, while the Southern classification fixes it at only 2,000.

The Louisville Freight Committee has decided to cause an investigation of freight car weights.

The plan for locking and damming the upper Cumberland River is indorsed by the Louisville Commercial Club, and Congressman D. C. Edwards has introduced a bill in Congress appropriating \$600,000 for the purpose. The expenditure of this money would make the Cumberland navigable the year round.

### LOUISIANA

European ship lines have informed the initial railroads at New Orleans that each one must have 750 tons at one terminal for a ship. The railroad people are not inclined to make the concession.

Claims on freight shipments will be settled with more facility hereafter as a result of concurrence by the executives of the roads east of the Mississippi and south of the Ohio in recommendations made by the Freight Claim Agents' Association.

In the past a shipper was obliged to file his claim with the delivering road, by which settlement was made on presentation of proper proof, and the amount paid out was apportioned among the lines that participated in the handling of the consignment. For instance, if a person in New Orleans gave a car of freight to the Northeastern for St. Paul and there was an overcharge, he would have to file his claim with the Chicago, Milwaukee & St. Paul. This necessitated considerable correspondence and not infrequently caused delays annoying both to the railroads and to the shipper.

The change, which is operative on all of the New Orleans lines, gives the privilege to the shipper of filing his claim with any road over which his consignment is handled. Thus the person who sent the car of freight from this city to St. Paul could enter his claim with the Northeastern, and the settlement would be made here, instead of through the claim department in the north of the Chicago, Milwaukee & St. Paul road.

Another change decided on that will tend to simplify work in the claim departments of the railroads in the agreement is that in future all claims of \$3 and less will be met by the line with which the claim is filed, and there will

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be no distribution of the amounts paid out, as is the case with claims representing larger amounts. Thus, if the Mobile & Ohio and the Big Four handle a car of freight from New Orleans to Chicago the claim will be paid by the Mobile & Ohio in this city, if it is \$3 or less, without assessment of half the charge against the Big Four. If the claim should originate at the Chicago end the Big Four would meet the claim under the same conditions. It is figured that this arrangement will dispense with a great deal of needless red tape in the claim departments of the various railroads, and that the difference in the amounts paid out to shippers having small claims by the railroads will be insignificant as compared to the amount of work and time saved.

The State Board of Appraisers has levied the following assessments of the main line of the roads per mile, the figures being the same as last year: St. Louis Southwestern, \$9,000; St. Louis, Watkins & Gulf, \$5,000; Vicksburg, Shreveport & Pacific, \$8,000; Wascour extension of Vicksburg, Shreveport & Pacific, \$6,000; Chicago, St. Louis & New Orleans (Illinois Central system), \$12,500; New Orleans Terminal Company, \$12,500; New Orleans & Northeastern, \$10,000.

New Orleans imports in March reached a total \$4,427,467, more than \$1,250,000 greater than like period in 1905.

The Harris-Schotten Company, one of the greatest grain exporting firms in the world, has surrendered its lease of the Illinois Central Elevator D at New Orleans.

Nine States are thus far represented in the Mississippi Valley Export and Import Association, formed at the Mississippi Valley Latin-American Convention. With James W. Porch, of New Orleans, at the head of the association, the following States have named as vice presidents these gentlemen: Kentucky, C. W. Hay, Frankfort; Minnesota, Rufus A. Hoyt, St. Paul; Tennessee, N. F. Thompson, Chattanooga; Wisconsin, W. A. Curtis, Milwaukee; Ohio, J. M. Sears or J. F. Ellison, Cincinnati; Pennsylvania, W. H. Williams, Pittsburgh; Arkansas, J. L. Caldwell, Pine Bluff; Indiana, James L. Barley. Several other States that had delegates at the convention have been requested to forward the names of those whom they wish to serve as vice presidents to the secretary of the New Orleans Board of Trade.

New Orleans Board of Trade recently held a meeting and discussed car service rules to be tendered to the Louisiana Railroad Commission. A committee was appointed to bring the matter before the Commission on April 17, but the hearing was postponed until the May session.

The so called "Frisco" ordinance was vetoed by Mayor Behrman because he considered the compensation inadequate and believed that neither the State nor the city was safeguarded in the act passed by the council. The mayor's veto was sustained by the council.

New Orleans is to have a regular steamship line to Rotterdam. The new line will be known as the Furness & Point Line.

President Samuel C. Spencer makes this announcement: "The Southern Railroad has not bought the New Orleans & Northeastern. I deny this officially. The Southern Railroad will handle its freight over the New Orleans & Northeastern and the Mobile & Ohio

for many years to come, just as they have in the past. There will be no change of any kind. This is an official announcement, and may be considered as such."

### MARYLAND

The Western Maryland is about to close the purchase of bottom lands at Ridgely, W. Va., opposite Cumberland, where the company's shops are located.

Governor Warfield signed the anti-"cut-off" bill and vetoed what was known as the "girdle" bill. The "cut-off" fight has been one of the most vigorous with which the recent session of the Legislature had to do. With the Pennsy and a coterie of followers on the one hand and Baltimore city and its suburbanites on the other the battle was brisk from the start, which was marked by the introduction of a bill providing for the building of a connecting line around the northern outskirts of Baltimore. The original bill was amended so as to require the building of the suggested "cut-off" at a greater distance from the city than Owings Mills and relatively distant points to the north and northwest of Baltimore. According to counsel for the railroad company, the bill, in the shape in which it receives the Governor's approval, will be prohibitive from the standpoint of the Pennsylvania, providing for a route too far out of the way and expensive to serve the purpose of expeditious traffic. The "girdle" bill, to which the Governor has decided not to set his approval, has been almost as widely discussed and valiantly fought for and against as the "cut-off" measure. This measure was originally passed two years ago and granted a charter to certain Baltimore County people to construct a belt line of street cars about Baltimore city. There was no objection to the bill in this shape. But this year the incorporators asked for an amendment which was so worded that it would have enabled the owners of the charter not only to build a road about Baltimore, but enable it to extend its lines into the city. It contained a merger clause which made this possible. The presumption was that certain leading New York capitalists were interested in this venture and were ready to pay a good round sum for the charter if the bill was passed. The objection made was that it was too broad. Under it all of the public service corporations could have been united. The Governor vetoed both the Crane 2 cent a mile bill, which made it compulsory on all railroads to sell no tickets at a higher rate than 2 cents a mile, and the Brown bill, requiring railroads to issue free passes to public officials.

### MASSACHUSETTS

The trolley express between Taunton and Providence has begun operation and will soon be extended to Boston.

The street war which is on between the New York, New Haven & Hartford Railroad, and John C. Cobb and Laurence Minot, trustees of the Roxbury Central Wharf and the South Bay Wharf and Terminal companies, owners of land adjoining the new freight yard on Massachusetts avenue, Ward 17, Boston, has gotten into the Supreme Court, through the latter's counsel, Ex-Mayor Josiah Quincy, who brought a bill against the railroad company seeking to restrain it from interfering with its use of Magazine street or road, which is the only direct route to its land situated between Massachusetts avenue and

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Magazine road. There will be a hearing May 7.

Boston is agitated by the introduction of what is known as the "ballast rate" on imports to New Orleans and applying the rate to inland points. The "ballast rate" is looked upon as threatening not only Boston but Philadelphia, Baltimore and Newport News.

The Pequannock has begun her trips between New York and New England ports for the New England Navigation Company.

Work in the Boston & Albany Motive Power shops at West Springfield has been suspended. Work has also been curtailed in the shops at Allston and Rensselaer, N. Y. About 1,000 men will be put out of work.

General Freight Agent F. S. Holbrook, of the New York, New Haven & Hartford, recently wrote the following letter to the Boston Merchants' Association, which has had the matter of delayed freight shipments before it: "I suggest that the merchants of Boston make a careful study of quick routes to destination, and instruct their salesmen to request the consignee in each and every instance where they sell goods to order them shipped via the best and quickest route from the shipping point to destination, and, if a consignee points out to the salesman a route which the salesman knows must be slow, or slower than other faster routes, and he finds that the consignee is using that route to save a few cents at the expense of losing a great deal of time both for the shipper and the consignee, I think the salesman can easily show the customer that they will both sacrifice business needlessly in order to save an insignificant sum of money. Suppose a salesman does get an order to ship via a slow route, and the shipper forcibly diverts the shipment to what he knows is a fast route, and the customer makes a reduction of 25 cents as a result of the diversion, would it not be policy for the shipper to stand a few deductions of this character and preserve his trade rather than to lose it to some other city which is nearer the customer? I do not mean to invite complaints which are on the face of them unreasonable, but I am prepared to entertain a good many unreasonable complaints, together with the reasonable ones, with the hope that the general result will be beneficial to the Boston merchants and to the New Haven road."

The New York, New Haven & Hartford has acquired a site for a big freight yard in the South Bay district of Boston.

### MICHIGAN

The Chicago & Northwestern Railroad paid into the Michigan State Treasury \$640,748 for back taxes. This is the first road to pay up its taxes under the recent decision of the United States Supreme Court upholding the Michigan ad valorem tax law of 1901. The railroads, while contesting the ad valorem law, continued paying their taxes each year under the old specific law. They now have to pay the difference and pay in addition a penalty of 1 per cent. per month for the delay in complying with the terms of the new law. This penalty in the case of the Chicago & Northwestern amounted to \$106,140.

These heavy payments of back taxes from the railroads will go into the primary school funds. It is estimated that the aggregate amount which will be received by the schools of the city of De-

troit alone will be \$800,000, and schools throughout the State will receive their due proportion. For the paying in of 1905 taxes the railroads have the remainder of April before the 1 per cent. a month penalty will run against them. For the previous years since the ad valorem law went into effect the penalty is already running.

Eight freight trains were recently taken off the Pere Marquette, but were restored within a few days.

The proposed new freight house at Battle Creek, which in all probability will be under the course of construction before winter sets in, will be three stories high. The office building will be fireproof and constructed of brick and steel. Several large traveling cranes will be installed within the sheds for the rapid and safe handling of heavy freight.

Within a few months freight service to the Union Station at Grand Rapids will be abandoned. The freight trains will be transferred across the river on the Pere Marquette bridge.

The establishment of a State Railroad Commission is being agitated.

### MISSOURI

The lines eastbound from St. Louis have decided not to make any rate changes until May 31.

Preparations were completed by the Missouri State Inspection and Weighing Department for the reinspection and reweighing of grain in St. Louis elevators and the inspection of grain on the tracks.

### NEBRASKA

The new freight depot of the Sioux City & Western at Fremont has been completed.

The question of a railroad commission is again being discussed in public prints.

### NEW JERSEY

Freight trolley cars have begun to move on several lines, but it is announced by the Public Service Corporation that it has no intention of taking advantage of the Wakelee bill.

Lehigh Valley has decided to make some important improvements at Metuchen.

Pennsylvania Railroad officials have decided to pay freight handlers in Jersey City 14 cents a ton for all freight handled, and the men will be divided into gangs of five. Heretofore they have been paid by the hour.

### NEW YORK

The Lehigh Valley Railroad wants a strip of land in New York on the East River between 123d and 125th street for use as a freight terminal. Borough President Ahearn had practically agreed to recommend the construction of a park on the land and the railroad company had gone to the Dock Department for permission to construct the freight shed. The matter has been referred to the corporation counsel.

The Delaware, Lackawanna & Western has bought a tract of land in South Brooklyn for a large freight terminal.

Assemblyman Campbell, leader of the Municipal Ownership forces in the Assembly, has conceived a scheme whereby all the commerce of New York harbor and the State canal shall be dumped into a giant freight terminal in New York city, to be built at State expense. He introduced a bill calling for the appointment of a joint legislative com-

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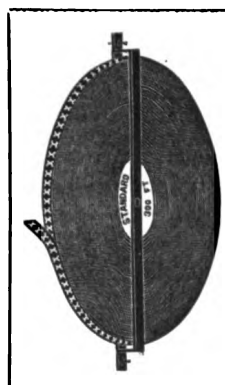
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NEW YORK

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mission of six to select a site for such a terminal along the New York water front not less than a mile long. The commission is also to find the cost. The Governor is directed to submit these plans for approval to the Legislature of 1907.

Brownsville, L. I., tax payers have served notice on Brooklyn Borough officials that unless the latter take immediate action to force the Long Island Railroad Company to remove a structure which it has erected across Belmont avenue, choking that thoroughfare at Junius street, they will bring mandamus proceedings.

The freight rates of the New York Central Railroad between Albany, Schenectady and New York have been entirely revised by the tariff bureau of the road. The rates are always changed in the spring as the winter and summer schedule of rates are different. This revision, however, has been more extensive than usual so that the rates might conform with those of other lines. Freight shipped over the railroad is divided into different classes and the new schedule, which has just gone into effect, shows an increase in some classes and a decrease in others. The tariff bureau of the road, it is understood, is considering a change of rates on the entire system which may go into effect within a short time.

The Chamber of Commerce has adopted a resolution calling upon the New York Central Railroad officials to explain why that road, which receives its charter from the State, should discriminate against New York in the matter of freight rates. The resolution arose out of the disagreement of Charles Stewart Smith with the conclusions of the Committee on Internal Trade and Improvements, whose report of their two months' investigation was read by ex-Mayor Schieren, of Brooklyn. The report reviewed the existing differentials in favor of Baltimore, Philadelphia, and Boston, and, while condemning them as "unjust and indefensible," declared that the committee deemed it unwise for the chamber to seek to bring about a change at the present time. A voice from the members' seats asked "Why?" Mr. Schieren went on to explain that "any immediate change in the complicated adjustment recently gone into in a thorough way by the Interstate Commerce Commission would have such far reaching and disturbing consequences that it would be unsafe." Charles Stewart Smith then said he did not see why New York should be made to suffer for her natural advantages, and the special facilities her merchants had built up through years of labor and heavy expense, and the resolution passed.

Excessive freight rates are bothering Coney Islanders. The matter was recently the chief topic for discussion at a meeting of the Thirty-first Ward Board of Trade.

Lockport has been placed in the Buffalo zone and will pay the same rates both east and west as Buffalo pays.

Long Island Road reports for the year 1905 a surplus of \$22,500 against a deficit of \$54,300 in 1904.

The standing committee on freight accounts of the Association of American Railway Accounting Officers recently assembled at Buffalo, N. Y. Among those present were: C. D. Bird, chairman; auditor of accounts, C. B. & Q. Railway, Chicago; R. E. Kimbell, secretary; assistant general auditor, St. L. S. W. Railway, St. Louis; W. H.

Anderson, freight auditor, Union Pacific Railroad, Omaha, Neb.; R. E. Berger, auditor of freight accounts, Wabash Railroad, St. Louis; W. H. Burns, assistant general auditor, C., R. I. & P. Railway, Chicago; F. M. Dewees, auditor of freight receipts, D. & R. G. Railroad, Denver; R. S. Dousman, auditor of traffic, Lehigh Valley Railroad, Philadelphia; Thomas Fedson, auditor of freight accounts, Mich. Cent. Railroad, Detroit; F. A. Healy, auditor, A. & W. P. Railroad and the Western Railway of Alabama, Atlanta; W. J. Healy, freight auditor, A., T. & S. F. Railway, Topeka; Jefferson Justice, auditor of merchandise freight receipts, Penna. Railroad, Philadelphia; W. Q. Morcom, auditor freight receipts, Mo. Pac. Railway, St. Louis; J. F. Shepherd, auditor of freight receipts, Ill. Cent. Railroad, Chicago; J. M. Watkins, auditor of revenue, B. & O. Railroad, Baltimore; Bertram Young, auditor freight and ticket accounts, D., L. & W. Railroad, New York.

A new freight yard will soon be constructed by the New York Central between Syracuse and Warners at a cost of \$1,000,000.

The board of managers of the Watertown Chamber of Commerce have protested against the high freight and express rates on the R., W. & O.

The Lehigh Valley has notified the Wabash that it may occupy its downtown freight terminal at Buffalo for at least another year.

A. J. Elias, who recently bought the Hamburg Canal property at Buffalo for \$901,000, declines to make known the name of his principal, but it is believed that either the Wabash or the Grand Trunk want the property.

The shippers of Troy, Albany and Cohoes are up in arms against the increase in freight rates by the Citizens' and the People's Hudson River lines. They talk of chartering a large steamboat now engaged in the freight business down the river, as well as a number of towing barges and tugs. Nothing definite has been done up to date.

Mayor McClellan has temporarily held up the Connecting Railway plans of the Pennsylvania. There seems to be no immediate likelihood of an agreement on terms. The Citizens' Association at Bay Ridge and Fort Hamilton recently rescinded the vote of a previous meeting in favor of the freight station at Bay Ridge.

### NORTH CAROLINA

Charges of discrimination against the Seaboard Air Line and the Atlantic Coast Line have been preferred by the Chamber of Commerce of Wilmington.

There is a congestion of cars in the yards of the Southern and Seaboard at Charlotte.

The colored truckmen at Greensboro employed at the Southern depot went on a strike for an increase in pay. Other men were employed to do the work.

During March 1,681 cars of all classes of commodities were shipped out of Charlotte, while 2,618 cars were received.

### OHIO

The new freight terminals of the depots of the Cincinnati Southern at Cincinnati will be ready for occupancy early in May.

The Pennsylvania Railroad has purchased the entire town of Burlington, on

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## FREIGHT TRAFFIC MANAGER

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the Cleveland & Pittsburg Division, for a freight yard and will sell the dwellings, churches and school houses at public auction.

Suburban street railway companies of Cleveland have been asked to place refrigerator cars in service for the transportation of milk.

The Nickel Plate will spend \$500,000 for new rolling stock and equipment of the system between Cleveland and Lorain.

At the annual meeting of the Ohio Shippers' Association W. A. Thomas, of Niles, was elected president and J. W. McCord, of Columbus, will be the secretary and treasurer.

The Transportation Club, of Toledo, recently held a meeting at which 100 railroad men were present. The opinion was unanimous that a 2 cent fare and good service are incompatible.

The Wertz railway rate commission law became effective April 14. The commission was appointed by Governor Pattison and will consist of two Democrats and one Republican, each receiving a salary of \$5,000 a year.

## OREGON

S. Benson will attempt to tow logs from Oregon to Santa Barbara. He thus hopes to overcome the high freight rates.

The Northern Pacific Freight Claim Department will be moved from Portland to Tacoma.

## PENNSYLVANIA

The Central Railroad has made plans for a new yard at East Allentown, with a total of 20 miles of clear track.

The Pennsylvania Railroad moved 181,837 cars through Harrisburg in March.

Delaware, Lackawanna & Western will spend \$2,000,000 on improvements at Scranton.

Pennsylvania Railroad is planning to establish a \$1,000,000 freight yard at Pavonia.

Twenty thousand members of the Pennsylvania State Grange have begun work in their campaign for the passage of a trolley freight bill by the next Legislature.

Business and commercial interests have formed a permanent organization for the abolition of a \$10 excess collected by the Pennsylvania Railroad Company on every \$20 mileage book sold.

The Pennsylvania has reduced the time for fast freight between New York and Chicago to fifty-six and one-half hours.

## RHODE ISLAND

The 10 cent reduction in coal rates made by President Mellen, of the New Haven, affects Rhode Island. In this immediate section of New England the New Haven road has six large coaling stations. They are at South Providence, Harbor Junction, India Point, East Providence or Wilkesbarre pier, Fall River and New Bedford, and it is the rate on coal from these stations that is affected by the reduction.

The trolley express, it is expected, will soon be extended to Brockton.

## TENNESSEE

The Mobile, Jackson & Kansas City has opened its line from Mobile to Houston.

The car shortage at Coal Creek mines is still serious.

The Queen & Crescent will spend \$4,000,000 for equipment before January 1, 1907. The contract calls for 5,000

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TEXAS

A. W. Montague, joint freight agent for the Texas & Pacific, Missouri, Kansas & Texas and the International & Great Northern, was recently indicted by the Seventeenth District Court grand jury on a charge of compelling his employees to work on Sunday.

It is emphatically denied that the railroads are trying to increase the present rate on rice.

The Railway Commission has taken preliminary steps toward issuing an order reducing the passenger rate on all Texas railways to 2½ cents a mile.

The Railroad Commission has adopted a new rule with a view of helping the railroads to enforce the correct classification and rating of freight and prescribing a penalty for violation of the tariff classifications.

Two negroes walked into the freight house of the Southern Pacific at Houston and deliberately trucked out a case containing 10,000 cigars, loaded the box on a dray and drove away. No trace of the thieves.

Santa Fé and the 'Frisco have joined in Houston for a terminal property.

Freight traffic between Houston and Brownsville over the Brownsville, St. Louis & Mexico has been opened.

VIRGINIA

It is thought that there may be a clash between the harbor commissioners of Norfolk and the United States Shipping Company over the collection of harbor masters' fees.

The Tidewater Railroad is to build a \$500,000 passenger and freight station at Norfolk.

It is announced that the Norfolk & Western will interpose no objection to the Tidewater Railway right of way into their terminal property on East Main street, Norfolk.

WASHINGTON

The new line to be built by the Northern Pacific between Spokane and Pasco will be a portion of the North Bank road now under construction.

The Dayton Commercial Club has asked the Walla Walla Commercial Club to assist in demanding that the O., R. & N. make a reduction in freight rates from Walla Walla to Dayton.

A new freight tariff between Toppenish and Granger has gone into effect. It is expected to promote the fruit industry.

J. C. Woodworth, general traffic manager for the Northern Pacific, says the lumber market in Washington is abnormal.

The O., R. & N. has reduced the freight rate on coke from Portland to Spokane.

WISCONSIN

Secretary of State Walter L. Houser has made formal complaint to the State Railroad Commission regarding freight charges on the Omaha road from Mondovi to Milwaukee.

Work has been begun on the West Milwaukee shops of the Milwaukee Road.

Oshkosh is suffering from a car famine.

Wisconsin Central has sold its large coal and commercial freight dock at Ashland.

The Milwaukee Northern Railway franchise was finally passed by the Milwaukee common council and signed by Mayor Rose.

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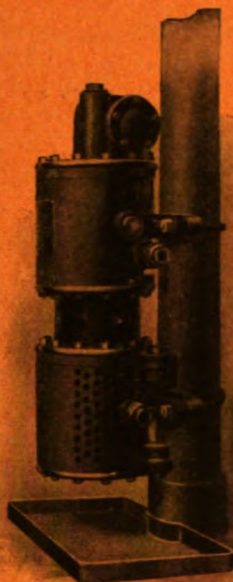
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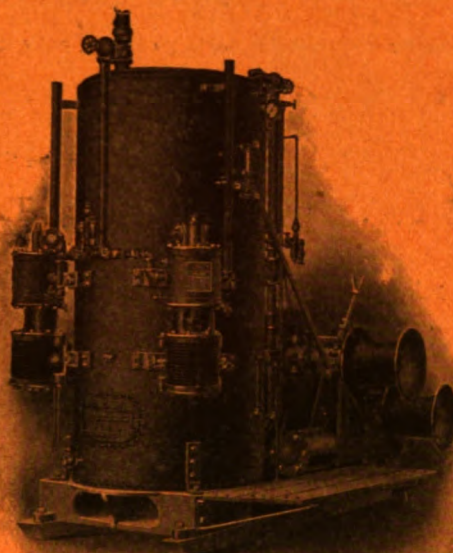
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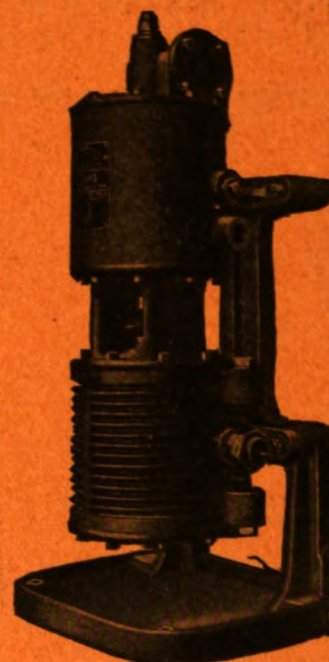
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LOUISVILLE VARNISH COMPANY, Louisville, Ky.

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The Hepburn Bill as Amended by the Senate

FREIGHT publishes the Hepburn bill as it passed the Senate. The amendments are numbered and printed in italics. As we go to press the bill is in the hands of the conferees: Senators Elkins, Cullom and Tillman, and Representatives Hepburn, Sherman and Richardson:

IN THE SENATE OF THE UNITED STATES, MAY 18, 1906.

Order printed as amended and passed with the Senate amendments numbered.

An Act to amend an Act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of an Act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

"SEC. 1. That the provisions of this Act shall apply to (1) *any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas by means of pipe lines or partly by pipe lines and partly by railroad or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.*

(2) *"The term 'common carrier,' as used in this Act, shall include express companies and sleeping-car companies. The term 'railroad,' as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated*

herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. (3)"

(4) *"No carrier subject to the provisions of this Act shall hereafter, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its officers, agents, employes, surgeons, physicians, actual and bona fide attorneys, and members of their immediate families; to ministers of religion, local and traveling secretaries of the Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers and Sailors' Homes, including those about to enter and those returning home after discharge, under arrangements with boards of managers, and female nurses that served during the civil war; to ex-union soldiers and sailors and ex-confederate soldiers; and to owners and care takers of live stock when traveling with such stock or when going to point of shipment or returning from point of delivery: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employes of carriers and members of their immediate families, nor to prohibit any carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitations, nor prevent such carrier from giving free or reduced transportation to laborers transported to any place for the purpose of supplying any demand for labor at such place. Any carrier violating this provision shall be deemed guilty of a misdemeanor and shall for each offense pay to the United States a penalty of not less than one hundred nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses, or who solicits or accepts for himself or other person, any such*

interstate free ticket, free pass, or free transportation shall be subject to a like penalty and fine. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

(5) "From and after May first, nineteen hundred and eight, it shall be unlawful for any common carrier to transport from any State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it or under its authority or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its own use in the conduct of its business as a common carrier.

(6) "Any common carrier subject to the provisions of this Act shall promptly, upon application of any shipper tendering interstate traffic for transportation, construct, maintain, and operate upon reasonable terms a switch connection with any private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connections as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

(7) "It shall be the duty of carriers engaged in interstate commerce to give equally good service and accommodations to all persons paying the same compensation for interstate transportation of passengers."

SEC. 2. That section six of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this Act shall (8) file with the Commission created by this Act and print and keep open to public inspection schedules showing (9) all the rates, fares, and charges for (10) transportation (11) between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line or by water when a through route and joint rate have been established. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately (12) all terminal charges, (13) storage charges, icing charges, and all other charges which the Commission may require, (14) all special privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part (15) or the aggregate of such aforesaid rates, fares, and charges (16) or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be (17) kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for

transportation, in such form that they shall be accessible to the public and can be conveniently inspected. (18) The provisions of this section shall apply to all traffic, transportation, and facilities defined in Section 1 of this Act.

"Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to the public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

"No change shall be made in the rates, fares, and charges of joint rates, fares, and charges which have been (19) filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' (20) notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

"The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

"Every (23) common carrier (24) subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

(27) "No carrier shall, unless otherwise provided by this Act, engage or participate in the transportation of passengers or property, as defined in the first section of this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this section; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

(28) "That in time of war or threatened war preference and precedence shall, upon the representation of the Presi-

dent of the United States of the need therefor, be given over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic."

(29) That section one of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, be amended so as to read as follows:

"That anything done or omitted to be done by a corporation common carrier subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall knowingly and willfully offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. Provided, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

"In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper, as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed

to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

"Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property from one State, Territory, or district of the United States to any other State, Territory, or district of the United States, or foreign country, who shall knowingly and willfully, by employe, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall, in addition to any penalty provided by this Act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly or willfully received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money or three times the total value of such consideration so received or accepted, or both, as the case may be: Provided, That the foregoing penalties shall not apply to rebates or considerations received prior to the passage and approval of this Act."

SEC. 3. That section fourteen of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"SEC. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

SEC. 4. That section fifteen of said Act be amended so as to read as follows:

"SEC. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential

or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will (30) be the just and reasonable (31) rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. (32) *All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, (33) in respect to joint rates, fares, or charges, (34) shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the (35) just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.*

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists (36), and this provision shall apply when one of the connecting carriers is a water line.

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

"The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act."

SEC. 5. That section sixteen of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"SEC. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the Circuit Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the

findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the Circuit Court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order, and not after (37): *Provided, That accrued claims may be presented within one year.*

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

"The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper (38).

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

"If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the Circuit Court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such

inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was (39) *lawfully* made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to injoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

"From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

"The venue of suits brought in any of the Circuit Courts of the United States (40) *against the Commission* to injoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office (41), *and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office; and if the carrier has its principal operating office in the District of Columbia, then the venue shall be in the district where said carrier has its principal office, and jurisdiction to hear and determine such suits is hereby vested in such courts.* The provisions of 'An Act to expedite the hearing and determination of suits in equity, and so forth,' approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits (42), *including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes (43): Provided, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: Provided, further, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the Appellate Court over all other causes, except causes of like character and criminal causes.*

"The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agree-

ments, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals."

SEC. 6. That a new section be added to said Act immediately after section sixteen, to be numbered as section sixteen a, as follows:

"SEC 16a. That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

(45) "*Sec. 16b. Nothing in this Act shall prevent any common carrier subject to its provisions from giving free transportation or reduced rates to the officers of the organizations of such employes for the purpose of transacting the business of such organizations with such railroads: Provided, That such reduced rates or free transportation are not issued with the view of discriminating in favor of or against any particular class of employes.*"

SEC. 7. That section twenty of said Act be amended so as to read as follows:

"SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employes and the salaries paid each class; the accidents to passengers, employes, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath

and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

"Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

"The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

"In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

"Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment.

"Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of compe-

tent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

"That the Circuit and District courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

"And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence. (46)."

(47) *"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability herein imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.*

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company through whose negligence the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property." (48.)

SEC. (49) 8. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

SEC. (50) 9. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in the courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

SEC. (51) 10. That this Act shall take effect and be in force from and after its passage.

Passed the House of Representatives February 6, 1906.

Attest: A. McDOWELL,
Clerk.

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Senate's Final Words on the Hepburn Bill

DEBATE on the Hepburn Bill continued in the United States Senate until May 18, when, with many amendments, it was passed by a vote of 71 yeas to 3 nays, the result being announced as follows:

Yeas—71: Alger, Allee, Allison, Ankeny, Bacon, Bailey, Berry, Beveridge, Blackburn, Brandegee, Bulkeley, Burkett, Burnham, Carmack, Carter, Clapp, Clark (Mon.), Clark (Wyo.), Clarke (Ark.), Clay, Crane, Culberson, Cullom, Daniel, Dick, Dillingham, Dolliver, Dryden, Elkins, Flint, Foster, Frazier, Frye, Fulton, Gallinger, Gearin, Hale, Hansbrough, Hemeway, Hopkins, Kean, Knox, La Follette, Latimer, Lodge, Long, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Millard, Nelson, Newlands, Nixon, Overman, Penrose, Perkins, Piles, Rayner, Scott, Simmons, Smoot, Spooner, Stone, Taliaferro, Teller, Tillman, Warner, Wetmore.

Nays—3: Foraker, Morgan, Pettus.

Not voting—15: Aldrich, Burrows, Burton, Depew, Dubois, Gamble, Gorman, Heyburn, Kittredge, Money, Patterson, Platt, Proctor, Sutherland, Warren.

Excepting the more or less extraneous conflict between Senators Tillman and Bailey and ex-Senator Chandler on the one hand, and President Roosevelt and Senator Lodge on the other—treated in another part of **FREIGHT**—the discussion progressed on broad and dignified lines.

Excerpts from the leading speeches follow, Senator La Follette's address, perhaps, attracting the most attention because of its radical character and the Senator's well known familiarity with the subject. The speech was too long for popular consumption, but his points were made with striking clearness, and the effort as a whole compared favorably with the best addresses of the debate, among which those of Senators Lodge, Foraker, Bailey, Rayner, Spooner and Knox stand out conspicuously:

Senator La Follette, of Wisconsin, said:

Mr. President, the bill before the Senate does not measure the importance of the subject to which it relates. The junior Senator from Iowa, whose share in the framing of this bill authorizes him to speak for its scope, directed attention to his eloquent address to "the three conspicuous propositions with which this measure is concerned."

First.—Broadening the meaning of the word "transportation" to include independent car lines and refrigerator companies "by requiring that every charge incident to the service shall be reckoned as a part of the public rate."

Second.—By authorizing the Commission "where complaint is made that a rate is unreasonable or unduly preferential to require the carrier to observe as a maximum in such case the rate which, in its judgment, is in conformity with law."

Third.—Requiring "a detailed report of the business of the railways, compelling common carriers engaged in interstate commerce to conform their systems of accounts to the regulations made by the Commission and to keep them open to reasonable inspection under public authority."

Excepting, then, as this bill provides for the new device of the private car and refrigerator companies, it goes no further than to patch up the rents made by judicial decision and clarify and strengthen the section relating to the keeping of railway accounts, and reporting thereon. Hence it may be said that this bill is a measure to correct the blunders of 1887.

Sir, it took thirteen long years of persistent and earnest effort to enact the statute of 1887. It is nine years since judicial decision took from that statute every element of protection which it had afforded the commerce of the country. The bill before us offers no more in fact—indeed, less than did the McCrary bill, the first measure which passed the House of Representatives for the regulation of interstate commerce in 1874.

There is this difference: We better comprehend now the consequences of handing over the commerce of the country to the control of railway corporations than we did then. It is for this reason, I repeat, that this bill does not measure the importance of the subject to which it relates. The lesson which we have learned in the last generation of time is that the control of transportation is the control of commerce; that the control of commerce is the control of the commercial and industrial life of the American people; that the control of the commercial and industrial life of the American people is the

control of their commercial and industrial freedom; that the control of their commercial and industrial freedom is the control of their political freedom; that this question, in its final analysis, goes to the integrity of our free institutions.

I do not disparage this bill in its present form. I credit it with everything it can accomplish. It is fair to say that it will aid directly and indirectly to equalize rates; that it will afford opportunity for associations and municipal organizations representing communities where rates are higher than more favored localities to apply, on that ground, for relief. This will, in a limited way, result in some reductions. I say in a limited way, because only the larger, wealthier, more enterprising and aggressive communities will be represented by active organizations with the courage and the means to make a fight against the railroads for better rates. It will be further limited by the fundamental defect in the plan which provides no way of ascertaining the reasonable rate, but only the comparatively reasonable rate.

But beyond this the larger shippers will derive the principal benefit from the bill if it is enacted in its present form. As a class they are mainly interested in equal rates for all shippers within the zone of competition. They are quite indifferent as to the amount of the rate, because in the end they do not pay it. While their complaints would undoubtedly result in some incidental reductions, they will not be filed with the Commission primarily for that purpose.

I protest that this is not a bill for the great body of the American people who constitute the consumers of the country. They do not buy freight of the railway companies at all. It has been suggested that the railroads have good cause to resent the designation of their charges as taxes upon the people. But they are taxes.

* * *

Mr. President, I am impelled by the interruption to say that the records of Congress show that for nine years the Interstate Commerce Commission has cooled its heels around the corridors and about the doors of the committee rooms of Congress. Cowan, of Texas; Bacon, of Wisconsin; Call, of California—any number of men have been here pleading for legislation that would relieve the commerce of the country from the oppressions imposed upon it.

* * *

Reason and experience alike compel the conclusion that any supervision or regulation of railway rates or services, to

be of material benefit to the public and adequate protection from railway abuses, must be the fullest and most complete regulation. It must not stop with conferring authority to prevent only a part of the evils of which there is complaint. It must meet and satisfy all just complaints. It must anticipate those devices of the future which would seek to circumvent and defeat its purpose. Unless it does these things, it will be found in the hour of need that it is too weak to prevent even those abuses against which it is directed.

To attain these ends, broad powers must be conferred upon the Commission. It must be assumed that the Commission in its exercise of these powers will not exceed that which is wise and necessary in the public interest. The Commission is accountable in the event of any such excess or abuse of power to the courts and to the public.

To accomplish these results the system of regulation must be right in principle; it must rest on the broad foundation that the *Government shall possess powers of correction co-extensive with the railway corporation's powers of abuse*. Whenever the railroad makes, in respect to its service, any rates, classification, or regulation whatsoever which are unjust or unreasonable as compared with any other rate or regulation or which are of themselves unreasonable or excessive, or does any other thing or pursues any policy at variance with the public interest and the general welfare, then the Government should have and exercise the power to set aside and prohibit such injustice or abuse and institute and enforce in lieu thereof any other rate, classification, regulation, thing, or policy that will best subserve the general welfare.

* * *

Notwithstanding that specific advances have in recent years been made in the rates on many important commodities, and general advances have been made through classifications, it is contended that the average freight revenue per ton-mile shows that rates have been reduced. Senators well understand that the per ton-mile rate means the average revenue from hauling a ton of freight one mile. This contention is supported with comparisons of the rates per ton per mile for various years, so selected as to support that claim. While it is true that the ton-mile rate shows a decrease from many years ago, since the year 1899, which marks the inauguration of the great period of combination and the elimination of competition, the ton-mile rate, even, shows a constant upward tendency year after year.

For these years the statistical reports of the Interstate Commerce Commission show the following average revenue per ton-mile:

1899.....	0.724
1900.....	.729
1901.....	.750
1902.....	.757
1903.....	.763
1904.....	.780

The increase, now, mark you, from year to year on each ton-mile is not large, but the aggregate increase when applied to the total traffic which it affects is enormous. The increase from 1899 to 1904 amounts to 0.56 of a mill per ton-mile. This increase, on the traffic of 1904 (175 billion ton-miles), equals a hundred million dollars. This is the amount the public paid in additional freight charges on the traffic of that year alone more than they would have paid had the rate of 1899 not been advanced.

But the increase in freight rates is only partly measured by the increase in the ton-mile revenue. The revenues are the product of the rates and the traffic. Both of these quantities are variable. The rates, as we have seen, have been advanced to increase the average revenue per ton per mile. The traffic, on the other hand, has undergone certain changes which tended to decrease the revenue per ton per mile. If there had been no advance in rates, the changes in traffic conditions would have lowered the per ton-mile revenue. Thus the tendency of traffic changes has been to offset and conceal the effect of

the increases in rates on the revenue per ton per mile. The net result of these changes in the traffic conditions from earlier years to 1904 is that a ton-mile of traffic represents a less valuable service in 1904. In other words, the public in buying this unit amount of traffic in 1904 get *less* for the price paid. The principal traffic changes producing this effect are that the ton-mile of transportation service in 1904 represents, as compared with former years, (1) a greater proportion of low grade, cheap traffic; (2) a greater proportion of long haul traffic; (3) a greater proportion of carload (as against less than carload) traffic.

* * *

For the first time in many years a great measure is before this body for its final action. The subject with which it deals goes to the very heart of the whole question. Out of railroad combination with monopoly and its power over legislation comes the perilous relation which Mr. Justice Brewer says "lifts the corporation into a position of constant danger and menace to republican institutions."

Sir, we have the opportunity to meet the demands of the hour, or we may weakly temporize while the storm continues to gather.

On Plymouth Rock eighty-six years ago Daniel Webster, looking with prophetic vision into the century beyond, uttered these words, which fall upon this day and generation as a solemn mandate:

As experience may show errors in our establishment we are bound to correct them, and if any practices exist contrary to the principles of justice and humanity within the reach of our laws or our influence, we are inexcusable if we do not exert ourselves to restrain and abolish them.

Mr. President, our responsibility is great; our duty is plain. If a true spirit of independent, patriotic service controls Congress, this bill will be reconstructed on the broad basis of public interest.

On Monday, April 30, the Senate adopted the fifteen minute rule to govern, after Friday, May 4, the discussion of amendments to the bill.

Senator Nelson, of Minnesota, said:

Mr. President, in the remarks I made in the earlier stages of the consideration of the pending bill I expressed some doubts about the right of Congress to deprive the courts of the power of issuing preliminary or temporary or interlocutory injunction. Since then I have given the question more thought and consideration, and I propose briefly to state the reasons why I conceive Congress has not the right to deprive the courts of that power, and I shall do it in as brief and concise terms as possible.

* * *

A United States court trying a case in equity sits as a court of equity and administers equitable relief. A court of equity, from the very inception of equity jurisprudence, not only granted relief by a permanent injunction, but also by a temporary injunction. The latter was oftentimes necessary to make the former of any value. There were many cases where it was necessary, in order to give proper and effective and final relief, that the property, or subject of litigation, should be preserved intact until the final disposition of the case, for without such temporary stay the final relief might prove abortive or incomplete, and it might be impossible to restore the parties to that condition in respect of the subject of litigation, which the court, by its final decree, might determine to be just and proper.

* * *

Relief by injunction is one of the remedies frequently invoked and accorded in cases in equity. Its object is to prevent rather than to redress a meditated or threatened wrong, and it is oftentimes of as much importance to grant the relief during the pendency of the suit as at the end of the final hearing, especially where the litigation may be prolonged. The object

of an interlocutory injunction is to preserve the "status quo," to maintain the subject of litigation intact, so that the final relief may not prove abortive. Justice Miller, in the case of the *United States v. Duluth* (1 Dillon, 469), lays down the rule in such cases as follows:

When the danger or injury threatened is of a character which cannot be easily remedied if the injunction is refused, and there is no denial that the act charged is contemplated, the temporary injunction should be granted, unless the case made by the bill is satisfactorily refuted by the defendant.

In a case in equity the court has the power, where the facts warrant, to grant relief by interlocutory as well as by final injunction. Both forms of remedy may be essential and necessary in many cases in order to afford complete and adequate relief.

In its ultimate analysis, the Senator from Texas, while he proposes to give a court of equity jurisdiction of a case in equity, to wit, a case reviewing the action of the Commission, yet he also proposes that the court shall only have power to grant a part of the equitable relief that pertains to such a case. In other words, while he would give the court jurisdiction of the case, he would say to the court that, while you may try and determine this case, yet there is a part of the equitable relief which under the well known principles of equity jurisprudence appertains to such a case I will not permit you to grant. And this is nothing more than dictating to the court the amount of relief it shall be privileged to grant. And clearly this would be unconstitutional, for it would be a denial of "due process of law," prohibited by the Fifth Amendment to the Constitution. While it might be possible, by legislation, to withhold jurisdiction from the court of such a case, yet after jurisdiction has once been conferred, it is not in the power of Congress to limit the court in the relief which it may grant. Congress may confer or withhold jurisdiction of a given case or given class of cases, but when once jurisdiction of a case is conferred upon an appropriate court that court becomes possessed of the full judicial power of the United States over that case, be it an action at law or a suit in equity; and that power as to a case in equity includes the power to give not merely limited or partial relief, but to give every form of equitable relief which was in vogue and prevailed when the Constitution was adopted.

The judicial power over a case within the jurisdiction of the court can not be circumscribed or limited by any action of Congress.

Senator Tillman, of South Carolina, said:

I can not myself, Mr. President, be converted to the idea that there is anything holy about a judge. He is entitled to great respect, and is always given it if he is at all worthy; but he is still nothing more nor less than a man; and when I see how easy it is for these great and high judges, against whose character and integrity of purpose not a whisper has even been breathed that I know of—the Court of Appeals of New York and the Supreme Court of the United States—when I see how they differ and how they change sides, and yet the vote of one man, who, it may be, on that occasion had indigestion or something wrong with his stomach, which deranged his mind in the night, changed the whole law of the land—I say I can not subscribe to the doctrine that these men are infallible or that they are to be any more trusted than the railroad commission.

If it shall be contended that it is necessary for us to incorporate in this bill such a provision as that which I introduced this morning, and which has been introduced in other shape by others, in which it is forbidden for these courts to issue preliminary or interlocutory decrees—if, I say, it is argued that such a provision will make the law unconstitutional, why, I say, let us try it and give the people the benefit of the doubt as to whether or not the Commission will be wrong—at least, until the judge has tried it. Let the judge meet it; give the railroad the opportunity to go into court and produce the

facts; let the judge determine once for all, but let him hear before he determines. That is all we ask. Some Senators say we cannot do that; other Senators say we do not want to do that; and so the people will watch to see how they vote, and determine for themselves whether or not they like it.

Senator Bailey, of Texas, said:

But the purpose for which I rose was to explain why it is that it is deemed important to deny even to an inferior judge—and I use that adjective to describe the judge rather than his office; I will not say a corrupt judge; I will simply say an inferior one—the power to grant a preliminary injunction, though we recognize that at last he will have the power to grant a final injunction. If he sought to abuse his great office, he could grant a temporary injunction, and he could hold that matter in his court, from month to month and from year to year, because the granting of a continuance rests as a rule in the sound discretion of the court, and for one cause or another he could continue the case from term to term until two or three years might elapse before the case would be finally decided.

Now, if this judge is denied the power to grant a preliminary injunction, the railroad itself becomes intensely and immediately interested in a prompt and speedy trial; the case is tried without any unnecessary delay; and though a bad judge renders, as bad judges always will, except by accident, a bad judgment, there is a prompt appeal from his decision to a forum which is free from any suspicion of wrong or injustice. While we cannot entirely take this case away from a judge whose partiality we may suspect, our purpose is to prevent him from deciding it at all until he decides it in a way and form that gives a prompt appeal to another and a better tribunal.

Senator Bacon, of Georgia, said:

Mr. President, it is recognized by us all, I think, that when the Commission makes an order the public should have the benefit of that order promptly so far as is practicable. Of course, the law's delays have been proverbial, certainly from the time of Shakespeare, and long anterior to that date. They have continued to this date, not because of any desire on the part of the lawmakers that there should be delay in the administration of the law, but because in the natural imperfection of all human institutions this has been found to be one of the difficulties which could not be thoroughly cured, where the effort to prevent delay is met frequently by the necessity to have delay in order that justice may be done. That necessity is undoubtedly frequently taken advantage of improperly, and the law's delays constitute a serious evil now, as they have constituted a serious evil from the beginning of courts.

In this particular case, I repeat, we all feel that the rate of the Commission should give to the public the benefit of the order made by the Commission as soon as practicable. There are two propositions, as I understand them, for the purpose of meeting that requirement. One is to deny to the courts the right to issue an interlocutory order. The other is one which, while I cannot claim that it was in its entirety original with me, is an amendment offered by myself, in which it is proposed that there shall be no stay of the operation of the rate of the Commission by an interlocutory order unless there shall be a requirement by the court of the carrier making the complaint and seeking the stay that he shall pay into court the daily proceeds from freight shipped over and above the amount specified in the rate of the Commission. In other words, if the rate of the Commission, for illustration, permitted \$1 and the carrier's rate was \$2 and he sought to have the rate of the Commission arrested, before such order could go into effect there must be another order which will require him to pay that additional dollar into court, not only on that day, but on each succeeding day, and also the machinery is specified for a return by the carrier to the court, giving in detail the statement of all shipments thus made affected by that rate and the

names of the shippers, so that upon the conclusion of the case the court can distribute this money, if the carrier's complaint is overruled, to the people from whom the money had been improperly collected, and if, on the contrary, the carrier's complaint shall be held to be valid, the money may be returned to him, that that may not be taken from him to which he is justly entitled.

Senator Teller, of Colorado, said:

Mr. President, there has been something said about the character of the Federal judges. I am in favor of that provision of the amendment offered by the junior Senator from Texas (Mr. Bailey), which provides that there shall be granted no interlocutory order suspending the operations of the Commission's rate until the final conclusion of the case. I do not put my advocacy of that proposition on the ground that I suspect the courts; but I put it on the ground that the Commission, having been intrusted with a public duty, and having performed it, is fairly to be assumed to have performed it well. Therefore its order should stand and be in full effect until such time as the court shall, upon final investigation and final determination, decide otherwise. That is exactly what the President of the United States asked Congress to do in his message of a year ago last December, and, if I mistake not the intention of it, that is what he asked Congress to do in the last annual message he sent to us.

I have not any question about our power to prohibit the granting of an interlocutory decree. There have been a large number of cases cited showing that Congress has repeatedly exercised that power and that the courts have upheld Congress and declared that power to be legally and properly exercised; and there are a great number of cases which have never yet been presented to this body that could be presented in support of that contention. Both upon principle and precedent we can stand firm in the conviction that the exercise of such power by Congress is not such an invasion of the carrier's right as would enable him to say that due process of law is not afforded him.

Senator Bailey, of Texas, said:

I confess that I have not yet learned in what respect an upright, brave and honest judge is better than a Senator who is equally brave, upright and honest, and an Executive who fearlessly and impartially executes the law as Congress has made it and as the courts have construed it deserves as well of his countrymen as either. The safety of this Government depends on all and not on any one of its departments.

It is all well enough to cultivate a respect for the courts, but it is not more important than it is to cultivate a respect for the Congress and for the Executive Department.

Senator Foraker, of Ohio, said:

I do it for another reason, Mr. President. Until within the last three or four months, according to my recollection, we never heard of a proposition from any source to confer upon the Interstate Commerce Commission power to make rates and to adopt and establish regulations governing the operations of the railroads of this country without making the exercise of that power subject to review by the courts. But suddenly, since the beginning of the present session of Congress, the proposition has been advanced and has been embodied in the Hepburn bill, which is now before the Senate, and in other bills, that this great power should be conferred upon the Commission, and that it should be exercised without any review of it by the courts.

* * *

But, Mr. President, suddenly there appeared one other idea that I am about to call attention to. What I was talking about particularly was the record made by the introduction of bills. I never heard of any bill omitting to provide for some kind of court review until some time after this bill of the Interstate Commerce Commission had been brought before our committee and had been considered there long enough to excite considerable discussion all over the country.

Nobody ever before questioned but that it would be the right of the carrier or the right of the shipper or the right of the community, and everybody felt that to subject a shipper to two trials was wrong if there was any way to avoid it—to a trial before the Commission and a trial before the court—and that we should have only one, and it should be a full and fair trial and a final trial, except subject to appeal. But nobody up until that time ever thought of such a thing as shutting the court house door against anybody. Everybody supposed, as a matter of course, that was a right inalienable, and there was no American citizen who could be deprived of it; and that, Mr. President, in all these proceedings, whether you commence them before a commission or not, they must sooner or later get into the court to have that hearing. So it was thought by some of us on the committee, who were just as anxious as the Senator from Iowa was, and as others of his colleagues are, to find a remedy for the evils complained of, that the duty was incumbent upon us to find a remedy that would not subject the shipper to more than one such hearing, and that if he was to have one anyhow, and one must be had in the courts anyhow, it ought to be there in the first instance.

On Friday, May 4, the unanimous consent agreement of April 30 went into effect, and the Senate began consideration of the bill by sections for amendment.

Senator Lodge, of Massachusetts, said:

Mr. President, the purpose of this amendment is to bring the transportation of oil and other commodities within the Interstate Commerce Law. Oil is one of the greatest articles of interstate commerce carried in this country, and it is now absolutely outside and beyond any Government regulation whatsoever.

* * *

The small well owner, to whom there have been pathetic references this morning, has not as yet made his objections known to me. I heard within twenty-four hours after the introduction of my first amendment, on May 28, from the Standard Oil Company. A representative of that company came to see me on the following day, and represented the uselessness and the injustice of this amendment. I have had a great many letters from small oil owners and I have had a great many letters from independent refiners in support of the amendment, and the objections suggested by the Senator from Maine and the Senator from West Virginia really do not touch the case.

There is no intention in this amendment of reducing the charges of pipe lines. It is simply to put the pipe lines where, if there is complaint against their rate, that complaint can be brought before some jurisdiction. Now, it cannot be brought before any jurisdiction that I am aware of.

I do not see, and I have yet to hear a single valid argument why this great company, doing this enormous interstate business in one of the greatest articles of interstate commerce and of export and import, should alone be excluded from the supervision of the Interstate Commerce Commission.

There are twenty-eight principal pipe lines in the United States, for the most part trunk lines. There are fourteen local or gathering lines. Twelve of the principal lines are combined in one system under one control, extending from Indian Territory and from Tennessee to the Atlantic seaboard. Five other principal lines form a system under one control, extending from West Virginia and Ohio through the Pennsylvania oil fields to Philadelphia. Of the lines and trunk lines referred to nine are known to extend across State lines, and there are two about which there is some doubt, although it is probable they do.

* * *

The Senator from Montana (Mr. Carter) referred to me as an enemy of the bill. I am not an enemy of the bill; I propose to vote for it, but I prefer to have a broad court review. Does the Senator from Montana mean that because of that I am an enemy of the bill? I think the bill can be greatly im-

proved by amendment. I think as it stands it is crude and incoherent legislation and that it will not meet the evils we are trying to cure. Therefore I want to amend the bill in the interest of the law itself. It does not follow that a Senator is hostile to a bill because he seeks to amend it.

Senator Dolliver, of Iowa, said:

Mr. President, the complaints are pretty numerous that the House bill is crude and awkward in its construction, and therefore unpalatable to the Senate. I watched with a good deal of interest the efforts of the Senate to get into shape the amendment which has already been adopted, though I doubt very much if anybody would take a great deal of pride in it, either in the form in which it was introduced the first or the second time or as amended on the floor by the author and by other Senators or as it finally passed the Senate. So we ought to incline to drop any controversy about the crudeness and awkwardness of expression which has entered into the framework of the bill.

Senator Spooner, of Wisconsin, said:

The power of Congress to confer and withdraw the jurisdiction is not here, as I understand it, in dispute, but by confounding *jurisdiction* with *judicial power*, treating the two words as representing the same thought and meaning the same thing, this motto is logical in saying that the power which the Congress has over the *jurisdiction* it has also over the exercise of the *judicial power* jurisdiction existing; that in a case over which the court has jurisdiction Congress has authority to limit and control the *judicial power*. I do not challenge the accuracy of these words, for if the power exists at all to limit or control the *judicial power* of the court in a case over which it has jurisdiction, the limit and extent of that control is to be determined by the Congress.

Mr. President, the judicial power of the United States is an indivisible thing. "Jurisdiction" may be distributed, and has been and may be changed and redistributed. There are fourteen sorts of jurisdiction. One finds them all in Bouvier. I have found but one meaning substantially imputed to the words "judicial power." The States possessed all the judicial power, and by the Constitution they surrendered to the United States that which is set forth in that instrument.

* * *

What is the distinction? The Senator from Texas seems to think—although I observe he qualifies the statement and limits it to its applicability to this question—that the words "judicial power" and the word "jurisdiction" mean and were intended to mean precisely the same thing. Do they? All through the books one finds words in the opinions somewhat loosely used. Now and then we find "distribution of judicial power," but in the great mass of opinions, Mr. President, the distribution of judicial power comes through the distribution of the *subjects of jurisdiction*. Given jurisdiction in an inferior court over the cases enumerated in the Constitution, or part of them, the *judicial power* lodges in that court, I think, without any words conferring it in the act of Congress. The Constitution says the "*judicial power shall extend* to all cases in law and equity arising," etc. The Senator from Texas and I do not differ as to the definition of the words "judicial power." I adopted the definition given by Mr. Justice Miller, and the Senator is content with that.

"It is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision."

That is not the *right to hear a case at all*; that is not the *right to exercise the judicial power* in any given case. That, to my view, is *jurisdiction*. But the *judicial power* to be exercised in the case over which the court has *jurisdiction* is the power to hear and determine and carry into effect the determination. Of course, parties are essential to a case.

Mr. President, I am not called upon to deny the broad statement which the Senator makes that the Congress can withdraw all jurisdiction from the circuit courts of the United States. I am not called upon, either, to deny that the Congress can withdraw part of the jurisdiction from the circuit courts of the United States and the district courts of the United States over a class of cases enumerated in the Constitution. I am not called upon to deny that the Congress may withhold, or, if having conferred, it may withdraw, jurisdiction over *habeas corpus* as a prerogative writ as contradistinguished from the *ancillary writ or writs essential to the exercise of the jurisdiction*. I am not called upon to deny that the Congress may withdraw jurisdiction from the courts over *mandamus* upon the same basis. I am not claiming, Mr. President, nor need I, that the Congress, having conferred jurisdiction upon the circuit courts of the United States over almost all of the enumerated cases in the Constitution, cannot withdraw one jurisdiction and another and another and another. But that is not the question. The question is whether Congress, having conferred jurisdiction upon an inferior court over a class of cases, and not withdrawing that jurisdiction over that class of cases, can, *where a case falling within the class is before the court*, subdivide that jurisdiction over the *one case*. I deny it. Congress can confer jurisdiction over a case or it can refuse to confer it, but, Mr. President, when Congress does confer it, the *judicial power* of the Constitution goes with it as to that particular *case*, and Congress cannot take away, in my judgment, from the court in that case or in cases of that class, the power to *hear motions or applications* and to *decide them* as the court thinks fit, *subject to correction by the Circuit Court of Appeals or the Supreme Court of the United States*.

If Congress may not only clip off the judicial power, but may give the court jurisdiction of a case and take away part of the jurisdiction over that case, what is left? The result of that would simply be this, I think, and that I believe is what this amendment would accomplish: I believe the court would say that it is such an attempted impairment of the jurisdiction that it could not assume it or exercise judicial power under it. I do not believe a court of the United States, sanctioned by the Supreme Court, would deem it possible to take half of the jurisdiction of the Constitution over a particular lawsuit. I think it must be withheld over the particular case or given to the constitutional extent.

Senator Daniel, of Virginia, said:

Provide a petition of review in the United States court and require, first, that all the parties put in their evidence before the Interstate Commerce Commission; provide, second, that no other evidence shall be heard in a court thereafter unless such evidence as could not have been obtained by due diligence until after the Interstate Commerce Commission had disposed of the case; third, require a copy of the record to be carried up before the court which is thus appealed to; fourth, require that notice be given—say five days—by any person moving to suspend or enjoin the action of the Commission; fifth, require that a full bond be given, and see that that bond defended and covered all the rights of the case before the party gets a suspending order; sixth, require that the case shall be made a preferred one on the docket and shall be promptly heard; and seventh, as far as practicable to do so, assure that hearing during that period of time when the Commission's order is suspended by itself and is not declared to be in force, covering the period that might come thereafter by requiring a good bond to be given.

Senator Clarke, of Arkansas, said:

The bill as it now stands, in my humble opinion, is based upon an erroneous theory of regulation from its very first provision to its last. It betrays a rare ignorance of the evils to be overcome and of the methods available to Congress in their suppression. In the first place, the bill provides for the

correction of a single rate, or the rate upon a single classification of freight, rather than for a comprehensive regulation of the entire schedule of rates charged by any given carrier. Even the partial remedy provided in the correction of the evil presented by a single excessive rate is only to be made upon complaint involving the challenged rate. This should not be so. The business of compelling common carriers to discharge their duties to the public is governmental in its character, and should be approached with that independence and fairness that should characterize the discharge of public duties and the exercise of public power. No shipper or patron of the railroad should be compelled to involve himself in an adversary contention over the rates to be charged with the carrier. The contest is an unequal one. The means available to the offended carrier to punish and destroy the complaining shipper are too numerous and subtle to warrant the belief that the right of complaint will be independently and courageously exercised. When a course of conduct has become so notorious as to constitute a part of the everyday knowledge of life, it is the duty of those who hold the governmental power of correction to assume the burden of applying the remedy without exposing the interests of any citizen to the aroused resentment of the powerful class whose abuse or permitted opportunities and powers has made necessary a resort to the remedial powers of the Government. That the transportation of the country has been and is afflicted by a systematic and all-pervading burden of extortion and discrimination practiced by the carriers is a matter that is not seriously disputed.

Senator Teller, of Colorado, said:

I have no hesitation in saying that I am a firm believer that those who do transportation business should do nothing else. But, as I said yesterday, I wish to repeat it is a matter which is not absolutely under our control. The States charter these companies and create these corporations and they declare what their powers shall be. When the product of a mine, in the case of coal, passes into interstate transportation it becomes subject to our control. It is absolutely without control on our part unless we assume a control that we never have assumed until it does reach that stage. Practically one may say that all the coal product of Pennsylvania enters into the interstate commerce of the country. New York and all New England and all the West are supplied with the anthracite coal mined in Pennsylvania. Anthracite coal reaches even as far west as the Missouri River. It was in the earlier days sent clear into the State of Colorado. Just now we are mining sufficient anthracite coal in Colorado. Of the 76,000,000 tons of anthracite coal mined in Pennsylvania last year the great majority of it went outside of the State. It is all of it the subject of interstate commerce. Yet there are corporations in Pennsylvania which are authorized by the law of Pennsylvania to mine coal and to transport it. It is not an illegal act; it is not a crime; it is not an offense against the law either moral or legal.

Senator La Follette, of Wisconsin, said:

Mr. President, the amendment which I offer imposes the penalty of imprisonment from one to five years for any act of unjust discrimination, as defined in the Interstate Commerce Act and the Elkins law amendatory thereof. It makes no change in the punishment by fine provided in the Elkins law, which is from one thousand to twenty thousand dollars. My amendment proposes the additional alternative penalty of imprisonment for violations of the law, now punishable by fine only.

It is the experience of mankind that respect for law is in some degree dependent upon the penalties imposed for its violation. The penalty must be severe enough to deter those disposed to violate its provisions from incurring the risk of so doing. It is a matter of small concern to the railroad to pay a fine for lawbreaking when they can exact the money from

the public to meet the payment. The railroad official shrinks from serving a term of imprisonment. The testimony taken by the committees of Congress and the reports of the Interstate Commerce Commission bear witness to the fact that the railroad companies of the country undertook very soon after the enactment of the law of 1887 to have stricken out of that law the penalties of imprisonment provided for its violation. The Interstate Commerce Commission appeared from time to time before the committees of Congress and opposed the change. Notwithstanding this, the change was made when the Elkins law was enacted in 1903. Since that time violations of the Interstate Commerce Law have been punishable by fine only.

* * *

As evidence of the fact that repeal of the penalty of imprisonment invites to further violation of the law, I cite the facts discovered by experts who examined the books of the Wisconsin railroad companies.

The Elkins law was approved on the 19th of February, 1903. Under an act of the Legislature of Wisconsin expert accountants were authorized to investigate the books of railroad companies doing business in that State. That investigation began, or was noticed to begin, on the 1st of October, 1903. That was seven months after the Elkins law went into effect. The investigation discloses that the rebates paid by a single company doing business in Wisconsin were as follows:

In January, 1903—I state it only in round numbers—\$37,000; in February, \$57,000; March, \$47,000; April, \$36,000; May, \$25,000; June, \$13,000; July, \$101,000; August, \$32,000; September, \$46,000. The investigation began in October. The payment of rebates for that month fell off to \$9,000, and in November to \$600, and in December to \$2,000. The investigation discloses that one of the railroad companies of that State paid something more than twice as much in rebates to shippers in Wisconsin during the year following the enactment of the Elkins law as they had paid the preceding year.

What was true of Wisconsin is true of other States. The result was inevitable. If the law is to be respected and upheld, those who violate it must be made to suffer such penalties as will cause them to heed and obey its mandates.

Senator Foraker, of Ohio, said:

Take the report made by Commissioner Garfield a few days ago. I read it through with care, in so far as we have been favored with it. Assuming that all he says is true, about which I do not know anything except that his facts are disputed to some extent, but, assuming for the sake of the argument that they are all true, there is not one thing pointed out by Mr. Garfield, not one evil mentioned by him, that the bill we now have under consideration will reach or remedy—not one. The evils he complains of all consist, in one form or another, of rebates and discriminations, open and secret, practiced under every kind of guise, in every sort of form that the ingenuity of railroad officials and shippers could suggest. Not one of them can you reach by this legislation, upon which we have spent three or four months of time. On the contrary, there is not one of them that you cannot reach in fifteen minutes in a court of equity having competent jurisdiction under the Elkins law. There is no rate or discrimination pointed out by him that you cannot reach.

It may be true, and doubtless is, as the Senator from Wisconsin says, that after the Elkins law was enacted it was discovered that rebates were being granted in Wisconsin. I do not know anything about the conditions there. But I do know that if the Elkins law had been enforced by the officials charged with the duty of enforcing it under the law there would not have continued any such condition of things, and there is no law on the statute book that now provides, and this bill if enacted will not provide, any remedy whatever against rebates. The House committee, in their report, said they did not undertake to deal with rebates and they did not undertake to deal with discriminations between shippers. They did

not undertake to deal with anything except only excessive rates, the least troublesome and the least burdensome evil there is.

Mr. President, I have here a statement which I took out of a publication called *FREIGHT*. It comes to me through the mail, through the kindness of somebody who favored me with it, in which there is from week to week a discussion of this legislation that is proposed and of everything pertaining to the freight business throughout the country. On page 243 of the number I have before me, which is dated New York, May, 1906, I find a statement as to the proceedings under the Elkins law. It gives the number of decisions by the courts sustaining and enforcing that law, and there are quite a number of them, all of them important cases. There was the New Haven Coal case, one of the most important cases decided by the Supreme Court of late years. That was under the Elkins law. There was the Trans-Missouri Freight case, involving a question of discrimination between communities. That was under the Elkins law. There was the case of the packing houses as against the live stock men—I have forgotten the style of the case—decided by Judge Bethea last January or February. That was under the Elkins law. There was the case a few days ago of the Chicago, Burlington & Quincy road, where that corporation was fined heavily. That was under the Elkins law. There was the case of the Fairmount Coal Company in West Virginia, where the proceeding was by mandamus to compel equal treatment in furnishing cars. That was under the Elkins law. In every one of these cases there was relief instantly at the hands of the court upon application for a restraining order or a writ, which was finally made permanent.

Mr. KNOX—Mr. President—

THE VICE PRESIDENT—Does the Senator from Ohio yield to the Senator from Pennsylvania?

Mr. FORAKER—Certainly.

Mr. KNOX—Let me suggest to the Senator from Ohio that the very important case of *Baer v. The Interstate Commerce Commission*, which decided that the anthracite coal combination had to expose its books for examination, was under the Elkins law.

Mr. FORAKER—That was under the Elkins law.

Mr. KEAN—And the tobacco case.

Mr. FORAKER—And the tobacco case, as the Senator from New Jersey suggests, decided only recently. It was under the Elkins law. So it is that in every instance where the Elkins law has been invoked, it has given instant relief, because in every one of these cases upon the filing of a bill a temporary restraining order or writ of mandamus or other order was allowed, which ultimately was made perpetual.

THE VICE PRESIDENT—The time of the Senator from Ohio has expired.

Mr. FORAKER—Allow me time enough to put in the *Record* this list of cases, and at another time I wish to point out and compare the cases decided by the Commission with those decided by the courts, when it will be found that the courts are far more expeditious.

THE VICE PRESIDENT—The cases will be inserted in the *Record*, as requested by the Senator from Ohio, in the absence of objection.

The proceedings under the Elkins Law, as printed in the May issue of *FREIGHT*, were inserted in the *Congressional Record*.

Senator La Follette, of Wisconsin, said:

So, Mr. President, I maintain with confidence that there can be found in no report made by the Interstate Commerce Commission an approval of the repeal of the imprisonment penalty of the Interstate Commerce Act, and I assert that whenever opportunity is given to investigate the books of the railroad companies of this country it will be found that the repeal of the imprisonment features of the Elkins law induced the payment of rebates to a greater extent than ever before.

Senator McCumber, of North Dakota, said:

Mr. President, it seems to me much more popular in this body to pass any character of drastic legislation aimed at a railway company for accepting a rebate and providing a severe punishment for any one connected with the railway company from the highest down to the lowest officer for being a party in any way to the acceptance of rebates than it is to touch the great corporations and the great trusts of the country, which have held the railways by the throat and are enforcing such rebates upon them. We have been rather severe with the railway company, which is the victim, but we have been exceedingly careful so far in our legislation not to interfere with the great trusts of the country, which are the ones primarily responsible for practically all the rebates which have been granted.

Senator La Follette, of Wisconsin, said:

I submit, Mr. President, after this Commission has gone over the ground, made an investigation, and fixed a rate, it ought not to be set aside at the end of a two year period or at the end of any period unless that rate is found for some sufficient reason to be such a rate as ought no longer to be maintained. The Commission will be able to accomplish very little in fixing rates if the Commission's rates are to expire by limitation and the railroad rates be restored without any reason whatever for such change. I am very certain that the only reason why the Commission ever suggested such a limitation in the first draft of the bill which they proposed was because they believed that they could not at the present time secure broad and comprehensive legislation from Congress. If they could at this time be clothed with authority to determine rates upon their own motion, then, sir, I am sure they would not recommend a time limitation upon the rates fixed by the Commission. If this bill were amended in that important particular the Commission would have full authority to revise a rate upon their own motion, if justice to the carrier or the public required that it should be done. Rate making by the Commission upon complaint only will be a slow process at best. The work ought to stand, unless there is some good reason for setting it aside. If there is good reason for changing a rate once fixed by the Commission, it can be made to appear upon investigation.

Senator Rayner, of Maryland, said:

This bill absolutely excludes the right to adjust differentials because it does not give the right to fix or adjust rates, but the power is given to fix maximum rates. It is not within the range of possibility to adjust a differential by the fixing of a maximum rate. If, for instance, a rate was lowered upon a road between Chicago and New York, and a maximum rate established in order to meet a lower rate upon another competing road between Chicago and Baltimore, the latter road would immediately reduce its rate and keep up the differential. Let me illustrate: If there was a dollar rate between Chicago and New York upon one road and a rate of 95 cents between Chicago and Baltimore upon another road, and the Commission lowered the rate upon the first road to 95 cents, the other road, that was covering the territory between Chicago and Baltimore, would lower its rate to 90 cents, and thus maintain the differential. The Commission could not interfere because it has no right under this bill to fix a minimum rate between Chicago and Baltimore, and it could not prevent the lowering of the rate between these places in order to meet the lower rate between Chicago and New York. I have therefore come to the conclusion that legally there is no power in this bill to adjust differentials, and practically it would be impossible for the Commission, even through arbitrary and unjustifiable process by induction, to reach this result.

* * *

Mr. President, this raises the distinction between what has been called the broad and the narrow review. If I may be permitted to say so, I think both those words are misnomers

and that the proper names are "the constitutional" and "the statutory review"; the statutory review, of course, always including the constitutional review.

I am in favor of the constitutional review. The review that the President of the United States has submitted to us is the broadest sort of statutory review; and I think that, in my judgment, as I shall presently try to demonstrate, whatever may be the result of the vote upon this amendment, this distinction ought plainly to get into the *Record*, so that we may all know how to vote upon it, and so that the people may understand the distinction. * * *

The one, the review of the Senator from Kansas, confines the court within a given compass—the compass of the Constitution; the other extends to the utmost limits of their jurisdiction. The one leaves the rate making power with the Commission; the other, as I shall presently show, transfers the whole controversy to the court and renders the Commission absolutely impotent and powerless to accomplish the object and purposes of its creation.

Let us see whether I am right or not. I will guarantee to any probationer or apprentice in his profession, if this review passes and he will take this case into court, I will stand surety and sponsor for him that the courts, without hesitation, will decide that they have a right to try the whole case from its inception to its completion as if no proceeding whatever had taken place under it.

Senator Allison, of Iowa, said:

The Commission is clothed by this bill with the power of Congress, as I understand, and when it makes a decision and a declaration, it has the force and power of a legislative act, or else we have spent here three months or more in vain. Either the making of a rate is a legislative act or it is nothing, under the Constitution and our system of government. The judicial power cannot be invoked to make a rate, nor can the executive power. Therefore, in acting here we are seeking, within constitutional limits, to devolve upon a commission of seven picked and enlightened men power to deal with this great and complicated question as related to 250,000 miles of railway.

Does anybody believe that it is possible for the courts of the United States to deal with this question under the Constitution?

Senator Cullom, of Illinois, said:

Mr. President, if we could constitutionally do so, I would not hesitate to confer upon the Interstate Commerce Commission the absolute, unreviewable power to fix rates.

I believe that the Interstate Commerce Commission is a much more competent body to fix a railroad rate than is a court of the United States.

Deriving their appointment from the same source, they should be as able and as competent as the Circuit judges of the United States. In addition, the Commission gives its whole time and attention to the consideration of all the details connected with the fixing of rates and the management of railroad property. Without at all reflecting upon our United States courts, the Interstate Commerce Commissioners necessarily become far more expert in this branch of the subject than any Circuit Court can possibly become.

Judge Grosscup, an able Circuit Judge of the United States, has recently said that one of the difficulties in the administration of the law is that the Circuit judges are totally incompetent to pass upon the question of rates. Judge Grosscup made this statement, not as a reflection on the learning and ability of Circuit judges, but because of the intricacy of the question and the vast amount of other important work which is the daily life of the Circuit judge. As he expressed it:

"The Circuit judge one day is exploring the intricacies of a patent case, another day he is hearing a personal injury case, another he is hearing some customs case, another he is pursuing the meanderings of some chancery case. Every day brings up some new subject covering some wide area upon

which he must be specially educated for the day's judgment.

* * * Now, call him from this judgment seat to decide upon a question, the most perplexing, the most difficult question to a man who has had no education, no vision of the subject upon which he is expected to rule. Thus I say that the Circuit Court is an incompetent court."

Senator Bailey, of Texas, said:

It must not be understood, Mr. President, that in saying this it is my purpose to withhold from the President of the United States the credit to which he is justly entitled for this legislation. No hope of a partisan advantage can restrain me from admitting that, without his help, even this imperfect and insufficient bill could never have become a law; but while I cheerfully make that acknowledgments of his services, his best friends must sincerely deplore that he did not keep his face set resolutely against every effort to emasculate this bill. Whether he was weary of the conflict and surrendered, as some men charge, or whether he yielded to the appeals for party harmony, as other men believe, I do not pretend to judge. But whether it was one or the other, or whether it was neither or both, he will find it difficult to explain to the American people why it is that he has raised their hope so high and then has fulfilled it in such a slight degree.

Senator Dolliver, of Iowa, said:

Mr. President, the theory of the bill is that the Commission shall entertain complaints made before it alleging violations of the Interstate Commerce Law. The Interstate Commerce Law has in it four sections which contain its prohibitions. The complaints are to be directed against the railway or the line of railway which is violating the Interstate Commerce Law. Therefore, I feel entirely free to say to the Senator from New Hampshire that the jurisdiction of the Commission is to require the railroad to cease and desist from its violation of the law and to conform its rates to the rates which in their judgment are lawful. I think no fear need be indulged that the Commission would go to the extreme of establishing a mileage system of rates in the United States. I certainly would regret it if that should be done, because the whole fabric of our market place would be disturbed by any such general change in the framework of our transportation system.

Senator Bailey, of Texas, said:

"I hold that every man in this country is entitled to use the railroads by paying a just compensation for the service which he employs, and the railroads are entitled to receive from every man who uses them a just compensation for the service which they render; but whenever the railroad serves one man for less, in the nature of things it must charge the other man more, because if under the lower charge against some traffic it is earning a return upon the value of its property, a readjustment would permit at least a slight reduction in all charges.

Senator Simmons, of North Carolina, said:

Mr. President, I want to state my position with reference to this question of court review, because I have found what the Senator from Oregon has just said with reference to a misunderstanding on the part of the people as to the line of cleavage between Senators on this question is true from personal contact with people in my own State on the occasion of a recent visit to that State. No Senator on this side of the chamber has at any time insisted that the courts should not have the right under any circumstances to review an order of the Commission. Some have insisted that the courts had the right of review in certain cases, whether there was any express provision in the act conferring that power or not; but every Senator on this side of the chamber who has expressed himself upon this subject has taken the position that if the courts did not have inherently and without express provision in this bill power to review questions which involved the constitutional rights of the carrier or the shipper that power ought to be conferred upon them by an express declaration. Mr. President, while common carriers are charged with a

public duty, and therefore are subject to governmental supervision, the ownership of railroads is private property, and is just as much entitled to the protection guaranteed by the Fifth Amendment to the Constitution as any other private property in the land, and I would not myself consciously cast a vote that in any way impair that right. This, I think, is the position taken by every Senator on this side who has addressed himself to this phase of the subject.

Senator Long, of Kansas, said:

We have provided a standard, but the duty is imposed upon the Commission to exercise its judgment in determining and prescribing a rate according to that standard.

Senator Foraker, of Ohio, said:

The point is one about which I think the Senator will not disagree with me. I only want to bring it out and put it in the *Record* that the standard which we have created, or will have created when this bill has become a law, namely, that rates shall be just and reasonable, is a standard that cannot be conformed to except by the exercise of discretion and judgment on the part of the Commission. It would follow, of course, that the judgment of one Commission might differ from the judgment of another Commission or the judgment of one man might differ from the judgment of another man.

Senator Long, of Kansas, said:

But the discretion exercised by the Commission would not be interfered with or revised by the court unless there was an abuse of the discretion, or unless the rate was fixed so low that it did not give a fair return to the carrier on the property employed in the service.

Senator Dolliver, of Iowa, said:

Whoever says that the President of the United States has surrendered anything impeaches a courage which needs no defense before the American people. Neither ought we to listen without protest to the suggestion that the President of the United States has been trapped. He is surrounded by official advisers who are great lawyers—great constitutional lawyers, if you please—and he needs no indorsement here, when he says to the American people that these amendments leave the Hepburn bill exactly as he desires it to be left, with that jurisdiction in the courts of which no act of Congress can deprive them.

The very object of this bill is to get the judgment of somebody wholly removed from the bias of interest as to what the rate ought to be and to give the finding effect within a reasonable time. The courts have steadfastly refused to assume that duty, because the act of establishing a rate is a power expressly conferred upon Congress. This bill creates a Commission to do that business, because, even if the courts had the power to do it, it is not within the field of their training and experience. We create the Commission, therefore, in order that this work may be done by men specially qualified to do it. The bill increases the number of the commissioners, and pays salaries nearly equal to the compensation of our highest courts. The questions involved are not questions of law. They concern the practical adjustment of everyday affairs of business, yet men stand here and gravely declare that a direct recognition of the jurisdiction of the Circuit Court to hear a suit brought to vacate one of these orders takes all findings of the Commission and subjects them to the scrutiny of a judge in order that its mistakes may be brought into chancery and exposed to the vicissitudes of an interminable lawsuit.

While it may be regretted that this discussion has been so largely given over to a battle of the law books, the outcome of it has not been as disastrous as might have been anticipated. For expositors of the Constitution, equally famous in American public life, while they have not convinced one another, have made everybody's position comfortable and everybody's opinion respectable.

Senator Simmons, of North Carolina, said:

Mr. President, after we have been discussing here for

nearly three months the question of whether we are to provide a broad or a narrow review; after the President has assured the Senate and the country that under no circumstances would he consent to the insertion of any provision in this bill which would confer upon the courts unlimited authority to review the actions and the orders of the Commission; after the gentlemen on the other side of the chamber, who have all along stood with the President upon this proposition, had repeatedly asserted upon the floor of the Senate and in private conferences with Senators on this side that they would stand inflexibly and unalterably against a broad court review, the Senator from Iowa, speaking for the President and speaking for that part of the Senators on the other side who have heretofore stood with the President in this matter, now proposes to amend the venue provision of the Hepburn bill and confer upon the courts jurisdiction to hear and determine every order and every requirement of the Commission.

Senator Bailey, of Texas, said:

I contended all the time, and I contend now, and I am supported in that contention by this amendment, that all the constitutional requirement of due process demands is that a man shall have one fair trial for his property rights. I contended that you can take his property and pay him a just compensation and that you can use it until the insufficient compensation, as ascertained by the Commission, is established upon a final trial. Under this amendment the carrier cannot set aside the Commission's rate by alleging that it is less than a just compensation or less than a just and reasonable rate. They can go on and take the carriers' service for five days, it is certain because the court cannot enjoin it until after notice of five days has been given, and then they must have a hearing. Senators, how long will it take the Commission and the carrier to prepare for a hearing? One week or one month? The principle is the same, and so it is this amendment asserts the power—

MR. CLARKE, of Arkansas—Judge Brewer said in the *Tompkins* case that it could not be done with three weeks of diligent labor.

MR. BAILEY—I thank the Senator for his suggestion. The Senator from Iowa agrees with me that the court can be prevented from issuing preliminary injunction. The only difference between the Senator from Iowa and myself is how long will we prevent it. As the Senator from Colorado (Mr. Teller) well says, if we can prevent it for five days, we can prevent it for five weeks; and if we can prevent it for five weeks, we can prevent it for five months, or five years; and so it is, that, after all, the difference between the Senator and myself is one of policy and not of principle.

I have had some trouble in satisfying myself as a matter of justice that the Commission's rate ought always to be kept in effect, though I have never had any trouble as a matter of law, and I now welcome to my support the senior Senator from Iowa and his distinguished colleagues.

The complaint of the junior Senator from Iowa against those constitutional lawyers who are always saying things are unconstitutional I leave him to settle with his friends on his side. I have not been saying things are unconstitutional. I have been offering perfectly constitutional propositions, and the lawyers about whom he complains are the ones who have been complaining against my proposition.

Senator Long, of Kansas, said:

If Congress confers upon the Commission the duty of determining and prescribing a just and reasonable rate and then imposes upon the courts the duty of ascertaining whether the rate fixed by the Commission is in fact just and reasonable, then the whole duty is imposed on the courts on review that is conferred upon the Commission, and, under these circumstances, there is no necessity for a Commission. The whole rate making power is conferred on the courts on review, which I do not believe they will assume. By examining the different court review amendments that have been offered, we

can understand very clearly the difference between an amendment which seeks to impose upon the courts the same duty that is imposed upon the Commission and one that does not. The broadest review provision I know of was that contained in the Esch-Townsend bill, which passed the House last session. This provision was the first suggested to the friends of this measure by the Senator from Rhode Island (Mr. Aldrich) as an amendment to this bill and rejected by us. Let me call your attention to the provision. After providing for the fixing of the rate by the Commission, it says:

Any person or persons directly affected by the order of the Commission, and deeming it to be contrary to law, may institute proceedings in the court of transportation, sitting as a court of equity, to have it reviewed, and its *lawfulness, justice, or reasonableness* inquired into and determined.

* * *

If Congress cannot fix rates in the manner prescribed in this bill, then the only other course to be pursued is to delegate to a commission the power to fix just and reasonable rates and then report its proceedings to Congress for approval.

This would not be practicable, for Congress could not approve every rate fixed by the Commission, and its approval would generally be of but little value on account of lack of definite information.

Senator Newlands, of Nevada, said:

Mr. President, I also regard it as very important that a rule should be prescribed by the Interstate Commerce Commission to prevent the keeping of secret accounts showing rebates, preferences, and other things forbidden by law.

But the question presented by the Senator from Ohio (Mr. Foraker) is one of power, and that is whether the Congress of the United States, acting under the granted power of the Constitution relating to the regulation of interstate commerce, can prescribe to a State corporation what the general form of its books and accounts shall be. His contention is that the regulation of Congress can only be applied to these books which relate to interstate commerce. He contends, I believe, that the language here is broad enough to cover all the books and accounts kept by a State corporation, whether they relate to State commerce or to interstate commerce.

Senator Foraker, of Ohio, said:

Mr. President, when we shall have done for this bill all we have done and all we are likely to do, so far as we are at present advised, it will be a bill as to which there can be urged very serious objections. It may perish—and it is my opinion that it will—in the courts.

Now, whether Senators agree with me in that or not, they must concede, one and all, and I think one and all do concede, that these serious objections to the validity and constitutionality of the bill will remain, after we have done all we can, to be urged against it in the courts.

Now, Mr. President, I take it that every Senator here is actuated by a desire to remedy the evils that have been justly complained of by the shippers of this country. I have no other purpose. I want a law that will be efficient, a law that will be upheld in the courts, a law that will not be a disappointment to the people of this country when we have put it upon the statute books; and it is because we have apprehension about the efficiency and the constitutionality of the bill we have been considering that I have, by the amendment which has just been read at the clerk's desk, suggested an alternative remedy.

Now, that is what I want Senators to get into their minds. What I have suggested is not in conflict with the line of the bill we have been considering. It does not weaken or destroy any provision of the bill. It is an addition to that. It is what I have properly called it, an alternative remedy. It provides that when a complaint is made to the Interstate Commerce Commission, the complainant, whether the complainant be a shipper or be a community, whether the complaint be of a rebate or of an excessive rate, or of a discrimination, the complainant shall, if he so desires, make known to the Com-

mission that instead of proceeding before the Commission under the bill we have been considering, to there have a full and complete hearing and then to go into the courts to have all that reviewed, shall make request of the Commission, and it shall be the duty of the Commission to send it at once to the court. First, of course, I should have said, the Commission shall stop to inquire whether or not there is a reasonable ground for the complaint.

Now, if you increase the number to nine commissioners, you will increase that very difficulty. I think a board of five commissioners would be more efficient than a board of nine commissioners. I do not know what you would do with nine commissioners. They would be in each other's way. You will increase the difficulty, in my judgment, without any compensating benefit. It is no more to me than it is to anybody else whether we have five commissioners or seven commissioners or nine commissioners. Five commissioners is a very proper number. I think it would be more efficient if there were only three. But we have had five. We are accustomed to that number. If you make it seven you will intensify this difficulty. If you make it nine you will accentuate it still more.

Senator McCreary, of Kentucky, said:

Mr. President, I am not in favor of the amendment proposed by the Senator from Massachusetts (Mr. Lodge). I do not think there is any necessity for increasing the number of Interstate Commerce Commissioners to nine. While we should have honest, able and industrious commissioners, the number should not be too great. According to my observation, a large number of commissioners generally do not work so well together as a smaller number. I am not in favor of increasing the salary of each commissioner to \$12,000 per annum, as proposed by the Senator from Massachusetts in his amendment. The work of the Commission will be increased in the future; the effect of the pending bill will be to give to the Commission more work and more responsibility than they have had heretofore, and I am in favor of increasing the salary; but I do not believe the salary should be increased to more than \$10,000 per annum. We pay our heads of departments only \$8,000. We pay our judges of the Supreme Court \$12,500. I see no reason why we should increase the salary of the Interstate Commerce Commissioners from \$7,500, which I believe is the amount now allowed them per annum, to more than \$10,000.

Senator Hale, of Maine, said:

On the other hand, as I tried to show and explain yesterday, if you will let this be a great commission, representing every part of the country, with great, strong men upon it, you will have a commission from which there will be but few appeals; the courts will not be the rate making power. But if you keep the Commission as it is, the Commission will not be the rate making power; cases will go by appeal, and will be presented under the statute, as we have framed it, to the courts, where they ought not to go. We ought to have so great a tribunal, Mr. President, that men will think twice, the companies will think twice, the lawyers will think twice, everybody will think, before undertaking to disturb the conclusions of this great Commission.

Senator Teller, of Colorado, said:

I do not believe it is worth while for us to waste time here to determine whether a railroad company shall give to one of its employes a pass, or whether the company will transport the employe's wife or son or daughter if they see fit; nor do I believe it is necessary to say they shall not give a free pass to anybody unless a pauper or an invalid, or unless an earthquake or something of that kind has happened. I think you can best deal with this subject simply by saying that men in public life shall not accept these favors from the railroads, and stop right there. I do not know by what authority you

propose to say that a railroad company shall not give to an officer of another railroad company free transportation, which has been the custom and usage ever since railroads were built in this country.

Senator Piles, of Washington, said:

I have confidence in the courts of my country; I have confidence in the Commission which the President will appoint to enforce and carry out the provisions of this law, and, Mr. President, if Section 4 is honestly complied with, the free transportation of this country will be relegated to the past so far as it has been abused, and no man who occupies a position as a public official will have a pass if the Railroad Commission shall say that the issuance of such passes is a practice which the railroad company should not indulge in.

Senator Knox, of Pennsylvania, said:

Under the law now, as I understand it, you can call the shipper. The fact that it is a misdemeanor and he participated in it is no reason why he cannot be compelled to give his testimony. The only thing he does is to secure immunity.

Senator Bailey, of Texas, said:

The Supreme Court has said you can do that, but the Senator from Pennsylvania will agree with me that that is a very doubtful decision. Assume that the decision makes the law; I do not believe that it meets the purpose and intention of the constitutional protection. The Constitution does not say that a man shall not be compelled to bear witness against himself unless the Government grants him immunity. But the court, with the help of Congress, has added that qualification which our fathers did not make.

The Senator from Pennsylvania knows better than I do, because his experience in the courts was longer and more varied than mine, that it frequently happens that out of one transaction and the knowledge procured by the prosecuting officers upon that trial comes a knowledge upon which other prosecutions may be based, not a prosecution relating to the very transaction under judicial examination, but other transactions, and the immunity does not go as far as the Constitution intended the protection to reach.

The shipper owes the public really no obligation. The carrier's obligation is to transport every man and to transport every man's property for a fair compensation, and to transport every man and every man's property for the same compensation as he charges everybody else for a like service. But the shipper is under no such obligation to the public. I do not question the power of Congress to denounce as a crime the conduct of a shipper who accepts rebates, but I do believe that the penalty against the shipper will interfere with the Government's successful prosecution of the carriers.

Senator Knox, of Pennsylvania, said:

Mr. President, that seems to make it essential for me to say what I think about the insertion of those words in the bill. I could not stop at this point and be entirely frank with the Senate nor fair to myself. I do not see that they perform any useful function at all. If they mean anything at all, they endanger and jeopardize the bill. If this legislation is going to be sustained in the Supreme Court, in my opinion it is going to be sustained upon the proposition that this is not a delegation of legislative power to the Commission, but that it is the enactment of a rule, with power conferred upon the Commission to apply it to particular cases as they arise.

The Supreme Court has stated time and time again, and has stated very recently, that when you undertake to delegate legislative power to an administrative body you undertake to do that which you have no power under the Constitution to do; and it seems to me it would be flying in the face of that decision and inviting disaster to write into this bill the very thing the Supreme Court has indicated we cannot lawfully insert in it.

Senator Bailey, of Texas, said:

I think I used the words "shall determine and prescribe,"

but whether I did or not, the Senator forgets that in addition to the authority to the Commission I sought to avoid the very doubtful question which the Senator from Pennsylvania (Mr. Knox) says exists—the question as to the power of Congress to delegate to the Commission the right to fix the rate; and I went further, after charging the Commission, an administrative body, with the power to establish and prescribe the rate, and I provided that the rate when so established and prescribed should thereafter be the only lawful rate. So that the carrier, coming into the court to attack the rate which they were required to charge, attacked not the Commission's rate, but the rate established by Congress upon the ascertainment of the Commission.

I am by no means sure that I escape the difficulty, if difficulty there be, even in that way, but it is certain if that difficulty can be escaped I thus escaped it.

My own opinion is that the words "in its judgment" either mean nothing or they are fatal to this bill. It is my opinion that the very purpose for which they are inserted here, if considered by the court to be their object, will invalidate this section of the act. The purpose for which they were inserted was to prevent the court from saying whether this was a just and reasonable rate. If the Supreme Court of the United States shall determine that these words were inserted in the bill for the purpose of denying to the judiciary the right and power to examine into the justice of the rate, they will hold this section unconstitutional precisely as they held the Minnesota law unconstitutional.

Senator Foraker, of Ohio, said:

Mr. President, I had reached the point where I wanted to say that it does not, in my judgment, make any difference in legal effect whether these words remain in or out of the bill, except only in this sense: With the words remaining in the bill it will be as though we had written across the face of it: "This bill is unconstitutional, and we expect it so to be held." That is what they mean here in legal effect if they stay there. I have pointed this out very frequently, and I have dwelt on it so elaborately on so many different occasions that I do not want to go into the argument again.

It means that, Mr. President, for the reason that all concede we cannot delegate legislative power. Now, what is legislative power except only for us to give to somebody else the exercise of a discretion that we ourselves are charged with the duty of exercising? Who is it that is to determine what is just and reasonable? The Commission, according to this bill; but what, Mr. President, is the power that Congress has in the making of rates, assuming now, for the sake of the argument, that it has power to fix rates, which I do not admit; but, assuming that Congress has the power to make rates, what is the power of Congress? It is the power to fix a rate that is just and reasonable. We cannot make any other rate; and if we confer upon the Commission the power to make a just and reasonable rate, we not only confer a legislative power, but we divest ourselves in favor of the Commission of every particle of legislative power we have with respect to the subject. For the Commission to make a just and reasonable rate is for the Commission to do all that Congress can do.

* * *

What is it to delegate legislative power? It is to give to somebody else the exercise of legislative discretion. The legislative discretion in question is to fix a just and reasonable rate. If we say we will not do that, but we will create an agency to do that very thing and invest it with power to exercise its judgment and discretion, we have delegated the very power that we ourselves have.

* * *

I regard this proposed law as unconstitutional, and I do not believe you can help it. Mr. President, you cannot now "make a silk purse out of a sow's ear" any more than you could when that utterance was first made.

The trouble with this bill is that it is fundamentally wrong, in my opinion. The Government has no power, in my opinion,

acting through Congress, to make these rates. I have dwelt upon that heretofore, and the Senator from Texas has called attention in a most impressive way to what was said by the Supreme Court in one of its latest utterances, in the Northern Securities case.

In the second place, conceding that we have the power, it is agreed upon all sides that we cannot delegate that power. What is the power that we have? It is the power to make just and reasonable rates. If we say we will not make them, but we will appoint somebody else to do it, we are abdicating our authority in that respect and undertaking to give that somebody else that authority; and that, I think, is fatal to this bill, because it is not like the case that has been supposed where a definite standard has been created. To say you shall make a just and reasonable rate is not a definite standard, for whoever undertakes to make a just and reasonable rate cannot make it by a mathematical calculation. You have got to do it by the exercise of discretion, and it is legislative discretion; and that is what I think will kill this bill, if nothing else does.

Senator Spooner, of Wisconsin, said:

I share the opinion expressed by the Senator from Pennsylvania (Mr. Knox), the Senator from Texas (Mr. Bailey), and many other lawyers on both sides of the chamber, that if these words "in their judgment," which it is moved to strike out, mean anything they are dangerous words in the bill. The court, if it were necessary to save the constitutionality of the law, might possibly be able to give to these words a construction that would consist with the constitutionality of the act, for the courts resolve all doubts in favor of the constitutionality of an act of Congress when it can reasonably be done.

Senator Morgan, of Alabama, said:

Mr. President, very great men—philosophers, lawyers, judges and divines—when they get into controversies about occult truth, seem addicted to overlooking very plain facts and familiar propositions that are called "common sense." They are mere commonplace, and therefore are not worthy of consideration in their judgment. This bill provides two things in the first section. One is that any rate that shall be prescribed upon transportation by the Commission shall be just and reasonable. The next is, taking the converse of the proposition, that no unjust or unreasonable rate shall be levied and such rates are unlawful, putting the proposition in both views. Therefore the whole emphasis of the bill in regard to rates rests upon the question of the reasonableness of the rates, for if they are unreasonable they are unlawful. I do not suppose this bill intends to confer upon the Commission the right to levy an unlawful rate, denounced in the bill as being unlawful because it is unreasonable.

But here are found words respecting the powers of the Commission that include the word "judgment," and that is seized upon as giving to the Commission the right to pronounce a final decree, a final judgment, a judgment that is in dignity, if not in all respects, the same as a final judgment of the Supreme Court of the United States; that is to say, when the Commission pass upon the rates which in their judgment are reasonable, that that shall be the end of the matter. There will be no further review by any court or any tribunal at all. A man or a corporation injured by it who says that the rate levied by the Commission is grossly unreasonable and unjust has his mouth shut. He has no right to get it in court and make any statement against it. It is a final and conclusive order by the Commission of the fact that the rate is reasonable and is not, therefore, appealable or reversible. Nothing can be said against it.

Senator Lodge, of Massachusetts, said:

I want this legislation to succeed. I want it to stand upon the statute books. If it goes to the courts and the courts hold that those words are unconstitutional, as they

well may, and the whole legislation falls, the people of the country will believe that this law has been a fraud from the beginning to the end, and that all of us alike who have to put it through with these words in it—House and Senate—never meant it to succeed. If other Senators are ready to take such a responsibility for the sake of keeping in the bill words admittedly unimportant, I am not. I want an opportunity to relieve myself by my vote from the responsibility for those words. If Congress keeps them in and the legislation falls, I do not want to be held responsible. I have been utterly unable to find any reason for keeping them there.

Senator Rayner, of Maryland, said:

Mr. President, I have risen at this stage of the proceedings for the simple purpose of saying that I shall vote for this measure with hesitation and with a great degree of reluctance. I feel this way because I think, with great deference to the Senators who think otherwise, that the clause in this bill which gives jurisdiction to the Federal courts to try these cases is absolutely fatal to the bill. This clause impairs its efficiency and destroys its usefulness. And I want to say right here, so that it can be indelibly imprinted in the *Record* that I enter my solemn and earnest protest against the insertion of that provision.

* * *

But I say to the Senator from Iowa this does not affect the question at all. I respectfully submit this to him. I am quite sure the Senator is sincere, and I am doing it for the purpose, perhaps in a vain hope, that some man may yet arise who will bring the President back to where he started from, and that when this conference is held some one man on the other side of the Chamber or in the House of Representatives will admonish the President that there is yet time to repent, and that we can get back to the only provision that will give life and vitality to the measure.

You place in the courts the right to try every case without limitation, to annul, suspend, injoin, set aside the order of the Commission; that when you give your jurisdiction you say not one word about what jurisdiction the court shall take. Having the right to give it either the constitutional jurisdiction or the statutory jurisdiction, you leave it absolutely unlimited; and when the cases go to the courts the court will hold, and I will stake my professional reputation upon it, that the case is inquirable into in the same manner as if it had never been brought before the Interstate Commerce Commission. And I want to see whether I can not demonstrate this to the Senator from Iowa before I have completed this argument.

Senator Teller, of Colorado, said:

I am not saying what the Supreme Court of the United States will do with this bill when it is enacted; and no man, no matter what his legal training may be, dare say what that court will do, for it would be a mere guess. As the Senator from Texas said yesterday, we thought at one time that the question involved was practically settled, but we know now that at least the court has declared that they have not settled that proposition.

I am not satisfied with this bill. I believe some amendments should have been made to it which have not been made; but it is the best probably that we could do here. When we shall pass it and the President shall sign it, as he doubtless will, it will go into operation.

Senator Foraker, of Ohio, said:

Mr. President, I may be wrong about it all; I, perhaps, have been; it seems to me I get on the wrong side of everything here of late; but there is one thing about it; I have been in keeping and record with my own judgment and convictions all the while. Mr. President, I have not opposed this measure because I did not believe there ought to be legislation. I think every Senator in this body knows that every time I have spoken I have insisted that there

were practices and abuses and wrongs that ought to be legislated against. But I have been unable to agree that this is either a constitutional way or that it is the best and most efficient way to accomplish that end. I labored to formulate a plan, and I labored hard to induce others to see and understand my proposition as I saw and understood it. In that I have failed.

I might now waive my own preference about it, I suppose, and say that out of deference to the judgment of my colleagues I will sacrifice my own convictions and vote with them. If I could see that there was any necessity for that I would, perhaps, be willing to do it. But as it has been said here, this measure will pass; it will pass by a unanimous vote, I suppose, except one; there will be one vote against it. I do not see how it would do any good to anybody, unless it would be to myself, to vote contrary to my own convictions as to what this legislation shall be. Inasmuch as it can not do any good to the country, and can not do any good to my party, or the interests that are to be legislated about, I prefer to carry away with me out of this controversy and contest the knowledge and the belief and the satisfaction that come to me from having the knowledge and the belief that I have acted as I have spoken and voted as I have spoken, in accordance with my own judgment and my own convictions.

Senator Morgan, of Alabama, said:

Mr. President, I will be one of a few Senators on this floor, I think, who will cast his vote against this bill. If I had no other reason for casting it, perhaps I might find a sufficient justification in the criticisms that have been pronounced upon it by those gentlemen who say they intend to vote for it. On a great question of this kind, involving the interests of every person in the United States, a bill can hardly approve itself to the public judgment whose friends, when they announce their support of it, denounce it as being the worst bill they ever had to deal with.

I am not concerned about the public sentiment of the people of the United States on this bill as some of the gentlemen are who have recently addressed the Senate upon that subject. The people of my State are not concerned in that. All they want under the Constitution and laws of the United States are the rights which are guaranteed to them plainly and firmly in that organic law. They claim nothing else. While I am a member of this body they will not fail to get their constitutional rights through my delinquency or through my fear of political consequences.

Senator Bailey, of Texas, said:

Mr. President, while this bill is not as good as it could have been made and is not as good as it ought to have been made, yet it is a distinct and great improvement over the existing law, and I shall cheerfully cast my vote in favor of its passage.

* * *

But still, and with these deficiencies, this bill deserves to receive the vote of Congress, and then if it shall be fairly administered by those charged with the duty of administering it it will win a fair degree of approval among the people. If it is not fairly administered, or if the carriers whose greed it is intended to restrain begin to rack their brains to find new ways to evade it or defeat it, upon them must fall the consequences.

Senator Tillman, of South Carolina, said:

I do not want to lay down the responsibility which has been imposed upon me when this bill was thrust into my hands without saying—because I believe it to be due him—that but for the work of Theodore Roosevelt, in bringing this matter to the attention of the country and proclaiming in and out of season his desire and purpose or hope to get effective rate legislation, we would not have any bill at all. It is true that the idea was not his; that it was announced in

three successive Democratic platforms. Nevertheless he seized upon it, and whatever success may come from it will be due largely to him.

That we could have got a better bill I have no doubt, and therefore I can not congratulate him on his victory. That he has surrendered I will not now assert, though everything points in that direction. I can not congratulate the Republican party for this legislation, because it will pass with practical unanimity; and while the G. O. P. is now lined up, with possibly one exception, all to vote for this measure, there are wounds to heal and some scars will remain, and there are some bitter memories associated with this session of Congress in connection with this legislation.

We could have had a far better bill if the President's first contention had been put in it—that is, the narrowest possible court review; the strongest possible restraint of the power of injunction. But we have got a bill, and if it shall fail, as the Senator from Texas says, to give the relief the people had a right to demand, it will be because the people themselves will go to sleep. The railroads may be depended upon to resume as soon as they dare their purpose, long exploited and carried out, of charging all the traffic will bear. They may for a time feel that it is wiser not to appeal to the courts too soon or to endeavor to annul or to set aside the acts of the Commission. But with those things I have nothing now to do. The fight will be continued, I am very certain.

I want to say one thing more. I am very glad that my responsibility, small as it has been, merely in charge of a bill without a committee behind me, here ends, and while I can not congratulate the Senate upon anything much in connection with the bill, I do congratulate it that we are in sight of a vote.

The yeas and nays were ordered.

(The controversial debate of a partly political character will be found in another place in FREIGHT.)

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A T last, after a lapse of ten years, after a decade of interminable hammering and pounding, after years of education of the public, after a multitude of addresses and speeches, a new rate bill is soon to be placed upon the statute books. It naturally divides

The Hepburn Bill and the Shippers

itself into two portions, one of which fair minded people must commend in no measured terms, the other of which is open to serious objection.

The substantive or defining portions of the act are all any one could desire. The broadening of the meaning of the words "transportation" and "railroad," the inclusion of other than strictly transportation service which is now performed by the carriers, the application of the act to express and sleeping car companies, the change of time within which rates may be advanced or reduced, the inspection of accounts, the right to prescribe the accounts which may be kept by the carriers, and the posting of tariffs, will serve well. What these terms and definitions shall mean when construed by the Commission or by the courts admits of some doubt, because things are not always legally held to be what they are denominated by laymen.

The remedial portion of the act we believe to be as worthless to the shipper and of as little value as a zephyr to get a five masted schooner off the rocks. The change in remedy is indeed slight. Such change as there is is to the advantage and benefit of the carriers. No wonder they are satisfied. Under the former procedure, the shipper's case having prevailed before the Commission, it became its duty to prove the soundness and righteousness of its judgment in a United States court and then seek compliance with its order. Under the new procedure it is for the carrier to prove in a court the fallacy and unrighteousness of the Commission's decision and secure an annulment of the order. Under the former procedure, the Commission must give its reasons for its decisions; under the new, it may omit the reasons which have led to its determination. The sole remedial change is that the carrier is given the opportunity to argue its contention twice to the courts, while heretofore it had opportunity to address the court only once. This is what is known as the "opening and closing"—a thing highly desired by all attorneys, a position which lawyers strive to secure. There is no change in the time consumed in securing a result. There is just as much expenditure of money by the shipper in proving that he or a commodity or a locality is the subject of a discrimination or abuse as heretofore; he is as wearied with

a long litigation as he has been in the past. The cause of the new law, if there be a single cause, is to be found in the fact that, by certain language from a high source, the word "administrative" has been written upon a banner. Some people have followed the banner, believing that by this sign they would conquer. They are deceived by a fancy and have cast aside the doctrine of the fathers. An administrative body never has and never will, under our system of government, control matters involving property rights. In certain countries, where civil law prevails, this is done. But never with us has the force of law been given to administrative orders, judgments and decrees. As long as the Anglo-Saxon blood runs in the veins of the American people, as long as calm judgment and logic prevail, it will remain an undeniable fact that the judiciary must be that department of the government to be invoked and which can alone give relief. Other suggestions avail nothing. A proper place to secure justice is a court.

The railroads have won. They have forged a mild, ineffective and possibly unconstitutional measure. Sooner or later, however, the American public, having ascertained its rights, will find that there is but one place to enforce them. We ought to congratulate ourselves that the law is not part of the immutable decalogue.

"My friend Casey and I were talking about the rate bill and President Roosevelt the other day," remarks George Fuller Golden. "Casey," I said, "I'm with the President. He is as pure as the driven snow." "'That may be,' replied Casey, 'but the snow must have been driven a hell of a ways.'"

It is to be regretted that in the homestretch of the rate bill, at the time when party lines had been obliterated, and patriotism, high purposes and a sincere desire to afford relief were uppermost, personal prejudice, political buncombe and party politics should have burst through the surface and spread molten lava of invective, ashes reeking with charges of dissimulation and sulphurous fumes of insincerity. Violent and un-

Unfortunate Scenes on the Senate Floor gentlemanly language adds nothing to an argument. Charges of demagogism, of bad faith and of ignorance avail nothing except to arouse the human passions. Such language as has graced—or better, disgraced—the floor of the Senate, ought to be expunged from the *Record*. But, even if expunged, it would remain in the mind of the American people. For months the Senate had the admiration of all careful students and thinking citizens, and it was believed that it was earnest and sincere in trying to perfect a measure which would afford relief from present transportation abuses. Such scenes as have been viewed on the floor of the Senate add neither color, weight nor effect to their deliberations. It matters not to the individual shipper whether a rate bill was accomplished by means of an alliance between the Executive and two wings of the two political parties—what the shipper wants

is results in the shape of relief from burdens under which he finds himself.

It is strange, but nevertheless true, that there is no one, in or out of Congress, who has taken an active part in the proposed railroad legislation whose motives have not at one time or another been impugned and whose sincerity has not been attacked. No one has been free from personal aggressions. The large shipper who has advocated a rate bill has been charged with furthering his own ends; the presidents and members of associations formed to secure remedial legislation have been held up to the public as demagogues. Members of Congress who have advocated a rate bill have been charged with doing so for the purpose of retaining their seats; Members of Congress who have not agreed with some particular view advocated by another have been charged with being corporation counsel and railroad attorneys. For our part, we prefer to consider them sincere, earnest in their convictions and conscientious in the performance of their duties. There are always two sides to any proposition, and sometimes there are six or seven; the rate bill has been one concerning which the points of view and advisability of details have been many. We do not think it becoming that those who have not agreed to particular points should be crucified on the cross of ridicule, and their flesh stripped from its bones by use of muck rakes. There can be, and no doubt is, honest difference of opinion. One may change his views after argument, reflection and study, or may adhere to his original convictions, and yet his motives may be as pure as the driven snow.

It must be agreed that, without such deliberations as characterized the general debate in the Senate, an unconstitutional bill would have resulted. Some people, eminent in their profession, think the present law constitutional. Those who disagree with that view must, if liberal and broad minded, have at least some respect for those who think otherwise. It will be for neither of these classes to determine the question. That will be decided by the calm and deliberate judgment of nine men, who are, least of all, swayed by public opinion.

It is said that the Interstate Commerce Commission will not be able to present even a preliminary report of its investigations into the relation between carrying companies and the mining of coal and producing of oil until the meeting of the next Congress. It is to be hoped that the ardor of those who are fighting railway abuses will not cool during the summer.

FREIGHT was precipitated into the Senatorial controversy over President Roosevelt's position on the Hepburn bill by Senator Bailey. In his statement of fact on May 12 the Senator from Texas was absolutely correct. With his inferences we have nothing to do.

In August, 1904, **Freight** and the Senatorial Controversy did call Mr. Roosevelt's attention to the importance of the railroad rate question in the campaign that was to follow.

and Secretary Loeb *did* reply, stating that the matter had been brought to the President's notice, and added: "He is really obliged to you for writing. I think his reference to this subject in his letter of acceptance will be satisfactory to you."

It also is a fact that the President's treatment of the question, both in his speech and letter of acceptance, was anything but satisfactory to FREIGHT. However, we have not since mentioned the subject. In political campaigns matters of expediency always arise, and we did not then, nor do we now, question the sincerity of Theodore Roosevelt's purpose. We yield to no one in genuine admiration of the present President of the United States.

But we know him. We know his career in politics from the time he ran for Assemblyman from the city of New York to the present day. He has ever adopted a means to gain an end. The ends that he has sought to attain invariably have been laudable ones; but any police headquarters reporter (not excepting Jacob Riis), in the days when Mr. Roosevelt was a Police Commissioner in the city of New York, will tell you that the Commissioner's statements were usually of an elastic character. He had a sort of a way of saying the next day: "I remember, but I forget," which all writers recognize as a privilege to be extended to men in public life.

In 1904, when FREIGHT first called his attention to the freight transportation problem, the President knew as little about it as Tim Sullivan knows about the metric system. The President did study the question, and undoubtedly his conclusions were based on the right lines. Unfortunately, he was led into wrong paths, and from these tortuous ways he was obliged to extricate himself as best he could—which is exactly what he did.

FREIGHT has consistently advocated and still advocates the transportation court plan first proposed by Judge Peter S. Grosscup and embodied in the bill introduced in the lower house of the present Congress by Representative H. M. Hogg, of Colorado. This plan puts the shipper or complainant, if he has a good case, to no expense; takes the matter straight to a determining tribunal, from whose decision an appeal lies to the Supreme Court only upon questions of law; and *this tribunal would have been appointed by President Roosevelt*, insuring appointment for character, probity and knowledge of the subject. Ultimately, we believe, the Grosscup plan will prevail.

We reproduce here for the benefit of our readers that part of Senator Bailey's address dealing with the President:

SENATOR BAILEY—The Senator from Montana in his enthusiasm to be recognized as a friend, a defender, an ambassador, as it were, of the President, declares that in the face of the last Presidential election the President gave the country an exhibition of matchless courage in defying the tremendous power of the railroads. Has the Senator from Montana examined the record on that question, as he did the record of the Senator from Maryland and myself? What will the Senate say when I tell the Senator from

Montana that in his messages of 1902 and 1903 the President was as silent as the grave upon the question of regulating the railroads; that standing in the presence of the American people, pending the great contest of 1904, he spoke never a word in its favor, either in his letter of acceptance or speech of acceptance?

Let me put it in the *Record*. In the President's message or speech of acceptance?

The act should be amended.

The Interstate Commerce Act.

The railway is a public servant. Its rates should be just to and open to all shippers alike.

In his message of 1902 he said nothing at all. In his message of 1903 he was still silent upon the subject, and only after his election in 1904 did he challenge the railroad power to mortal combat. Did the Senator from Montana know that when he declared that the President had exhibited a marvelous courage in defying it prior to his election?

MR. CARTER—Will the Senator from Texas yield?

MR. BAILEY—I do.

MR. CARTER—Does not the Senator from Texas know that in a public address, delivered in the city of Minneapolis, before his nomination, to which the Senator refers, the President of the United States had, in clear, distinct, and unequivocal terms, announced his position upon the subject, and likewise upon necessary anti-trust prosecutions and legislation?

MR. BAILEY—I am free to say that I did not know the President had discussed the railroad question in his speech at Minneapolis. I have examined his public messages to Congress; I have examined his speech of acceptance; I have examined his letter of acceptance, and I have found no word in them. I will tell the Senator from Montana more. But first let me say, Mr. President, this turn in the debate is not of my choosing. I have studiously refrained from speaking any bitter word against the President during this prolonged struggle. I have felt that all the friends of efficient legislation on this subject ought to spare each other from attack and bitter speech, and I have borne patiently some things of which I had a right to complain rather than create divisions and dissensions among the friends of this bill.

Let me tell the Senator from Montana, further, that in the summer of 1904, before the President had spoken his speech or written his letter of acceptance, his secretary, in reply to a letter addressed to him by the publication known as "Freight," said to the editor of that paper that President Roosevelt in his letter or speech of acceptance would speak out on the railroad question, and speak in a manner entirely satisfactory to that editor. And yet, sir, the Senator can search in vain both the letter of acceptance and the speech of acceptance for a word to redeem the promise of the President's secretary.

I do not say the President put it in his message and then when his astute political advisers told him that the railroads would not contribute to his campaign that he cut it out. I will not say that, although there are many men uncharitable enough to say it. I only put before the Senate and the country the fact that his secretary said the President would speak on it and that he did not speak on it. Perhaps those insurance companies which were contributing the trust funds of widows and orphans to secure his election owned so many of these railroad bonds that they deterred, not the President, but the President's advisers, from proclaiming his hostility against the railroads immediately preceding the election.

Mr. President, I love a brave man; I love a fighter; and the President of the United States is both—on occasions; but he can yield with as much alacrity as any man who ever went to battle, civic or political. That he fights furiously at first I grant you, but he seems to have no endurance in these political contests. Only a short time ago he was going to revise the tariff, but his friends called him off. When that

great voice was filling the nation with a demand for tariff revision, it suddenly sank into the gentleness and sweetness of a whisper. Next he was going to have the railroads regulated, and it was announced that Congress would be convened in extraordinary session to deal with it; but the great leaders assembled with the President, prayed with him a little while, and no call was issued for an extraordinary session of Congress. He waited until the regular session, and five months of that has elapsed and still no legislation.

If the President were this heroic figure which the Senator from Montana would have us believe him, you know what he would have done. He would have summoned these Republican leaders from the House and the Senate to a conference, and he would have said to them: "Gentlemen, I am not talking to you now as President of the United States; I am talking to you as Theodore Roosevelt, a Republican. I am talking to you as a Republican. I want to tell you that I happen to know that unless you pass a good bill the President of the United States intends to veto it." They would have passed a bill fulfilling in some degree the reasonable expectations of our people. If Congress had failed to do that, and he had vetoed the bill they passed and then convened them in extraordinary session to pass a good one, he would have written his name with the names of Jefferson and Jackson and Lincoln among his illustrious predecessors.

But he did not deal with the situation in that firm way, and let us have no more talk in the Senate and throughout the country about this iron man. He is clay, and very common clay.

MR. ALDRICH—Will the Senator from Texas permit me to ask him a question?

MR. BAILEY—I will.

MR. ALDRICH—Does the Senator think that the bill which passed the House of Representatives and received the unanimous vote of the Republicans in that body is an effective piece of legislation?

MR. BAILEY—I do not, and I will go further and say it is not as good as that same bill will be when it passes this body. But both of them together are not as good as they ought to be.

With the later controversy between Senators Tillman and Bailey and former Senator Chandler and the President, we are not concerned, except to say that it is incredible that the President inspired the attack in two newspapers on the Senator from Texas, which would have been despicable had it not been laughable. We think there are some things that Senator Bailey takes too seriously.

THE communication in this number signed "Traffic Manager" is one which should receive the attention of those who are interested in promoting amicable relations between shippers and carriers. It is charged, and doubtless with a great deal of truth, that the treatment of one who seeks to prevent the advancing of a rate or classification is not always courteous. Of course, it may be said that when one refuses to make known his name the charge is not worthy of consideration. Perhaps it is not, but when the charge is a common charge, one known to any one who ever sought to ask "a favor" of a traffic or classification association, it would appear that the carriers had better sit up and take notice.

Amicable Relations Between Shippers and Carriers

Much of the public unrest today in regard to rail-

road matters is due to a lack of diplomacy on the part of railroad officials, and also knowledge on the part of the heads to the methods resorted to by their subordinates. We commend to the officials of carriers, particularly the heads of departments, the cultivation of the policy of at least respectfully listening to the shipper. The railway lives by virtue of the shipper and his business; the shipper lives by virtue of the carrier and his service. They ought to go hand in hand. Why they do not may, as charged by our correspondent, be due to the discourteous, not to say insolent, treatment shippers and their associations have received at the hands of committees representing a number of carriers.

For our part, we have not been advised of the impracticability of a traffic or classification committee keeping a docket, which shall contain the propositions to change rates or classifications. Perhaps objections—and well founded ones—may exist. If they do, we see no reason why they should not be made public.

FREIGHT is now, as always, open to complaints by shippers. It is here to cure transportation abuses, and those who feel themselves aggrieved are cordially invited to avail themselves of our offers.

The necessity for a special transportation court has really become acute. United States District Attorney Stimpson, of New York, has stated to the Judiciary Committee of the House the necessity for an additional judge in his district, being the Southern District of New York. He recently described the congestion of litigation and stated that it was almost impossible to promptly try the persons indicted for violation of the laws prohibiting the giving of rebates. He referred to the sugar cases in which there are, at present, seven indictments.

FOR years the public have been taught that the "system" of the Pennsylvania System was really more than perfect; that the abundance of red tape, rivaling the Government itself, was necessary to the existence of a large corporation, and that its officers, officials

and employes were monuments of virtue. Railway officials have had their attention directed to the probity, uprightness and virtue of the "Pennsy" in bone and sinew.

That road had the best men, and more, it knew it had. If one did not credit the statement he could verify it by asking one of the officials. President Cassatt has held a high head, and in public and private has lauded himself and the corporation over whose destinies he presides. Whether by reflection, intuition or schooling, it is nevertheless a fact that the other officers and employes have strutted before the public gaze and asked that they be beheld as the beaux ideal of the railway world. And they were proud of it!

Years ago, and before there were railways, it was decreed that pride should have a fall. For the "system" of the Pennsylvania System the fall has occurred. Indiscreet people will denominate it rotten; milder tempered people will open their eyes and say, "Can

it be?" From the disclosures under the Tillman-Gillespie resolution it appears that officials of all classes (ordinarily termed "lower" and "higher up") have received gratuities. The form has been money at holiday season, stock in season and substantial favors from patrons at any old season. The system seems to be honeycombed with graft; the guiding hands, from vice presidents to car distributors, seem tingling to receive the life blood of commerce.

Other carriers, not yet investigated, are enjoying the disclosures immensely. For so long they have had the "Pennsy" and its virtues, corporate and individual, flaunted in their faces, that they, too, had begun to have faith in the boast. Now, with a merry twinkle, they see that the "Pennsy" is humbled; her head droops and she no longer stands a monument of honesty. The cause they attribute to permanency in service, and to a system by which efficiency is said to control.

The real cause is in the lethargy of the public and of the stockholders. The "Pennsy" board of directors may investigate. The cry of the age is investigation. Boards of directors are not Levites. We predict that the broad mantle of charity will be spread over a long and efficient service.

THE decision of Judge McPherson, by which carriers are required to publish and file rates on export and import traffic, will go a long way in preventing the so called "midnight tariffs." While there are weighty reasons advanced why these rates should not be published and filed, yet in the present state of the law it would appear that there is no good reason why it should not be enforced. Certain it is that there may be cases where the publication of rates prior to making the shipment would result in hardship to the carrier and the shipper. In other instances no harm can come to any one by a compliance with the law. Must a discretion be given to the carrier, or to a governmental agency in this matter?

"FREIGHT" ASSISTS ALL SHIPPERS

Baltimore, Md., May 10, 1906.

Freight Publishing Company, New York City:

Gentlemen—Your book of letters from subscribers of **FREIGHT** to hand, and regret that our letter was not forwarded in time for publication.

We have been subscribers of **FREIGHT** since January, 1906, and find same a valuable magazine. The information contained therein as to the acts of Legislature and the Interstate Commerce Commission regarding the rate question is of material assistance to all shippers.

We shall remain permanent subscribers to **FREIGHT** while it remains as helpful as it is at the present time.

With best wishes for a largely increased circulation of **FREIGHT**, we remain,

Very truly yours,
E. ROSENFELD & CO.

Dictated: W. H. Bond, Manager, Shipping Department.

Subscribe for FREIGHT; \$3.00 a Year.

THE assistant to President Cassatt, W. A. Patton, referring to his ownership of stock in coal companies which furnish tonnage to the Pennsylvania Railroad, and which sold coal to a railroad of which he is president, said: "In the old days this thing did

It Was Not So In the Olden Days

not seem to be the crime it is thought now." Of course, no one can say what period of time Mr. Patton refers to by the "old days," but his attention might be called to Section 6, Art. XVII of the Constitution of the State of Pennsylvania, effective January 1, 1874. It reads:

"No president, director, officer, agent or employee of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company."

Of course, Mr. Patton is not a lawyer, and, with \$307,000 in stock which cost him nothing, can ill afford to employ one. Perhaps the Constitution of Pennsylvania does not apply to the domains of the Pennsylvania.

NEW YORK TRAFFIC CLUB ORGANIZED

The New York Traffic Club was recently organized for the purpose of promoting the mutual interest of the shippers and carriers. The officers are as follows:

President—B. D. Caldwell, vice president of the Delaware, Lackawanna & Western Railroad.

Vice Presidents—George T. Smith, general agent Pennsylvania Railroad; L. W. Donnalley, traffic manager Diamond Match Company; C. F. Daly, passenger traffic manager New York Central lines; H. L. Joyce, vice president Interstate Lighterage Company, and R. Ten Broeck, general Eastern agent Union Pacific system.

Treasurer—E. G. Warfield, traffic manager Malory lines.

Recording Secretary—C. A. Swope, Eastern freight agent Louisville & Nashville Railroad.

Corresponding Secretary—C. H. Tiffany, traffic manager West Virginia Pulp and Paper Company.

Trustees—M. F. Anderson, traffic manager Standard Table Oilcloth Company; L. M. Allen, general Eastern agent New York Central lines; C. A. Florence, general Eastern agent Illinois Central system; W. G. Rheinhold, traffic manager Ward Line; R. C. Caples, traffic manager National Steel & Wire Company; A. F. Mack, traffic manager U. S. Steel Products Export Company; F. M. Johnson, general Eastern agent Baltimore & Ohio Railroad; W. E. Hoyt, general Eastern passenger agent Missouri Pacific system, and F. J. Woulfe, general Eastern freight agent Lehigh Valley Railroad.

Irritating Methods of Bureau Managers

To the Editor of Freight:

SIR—The thought has occurred to the writer that the complaint column of **FREIGHT** would be an excellent medium for voicing the complaints of shippers with respect to traffic, classification, weighing, inspection, and other bureaus and associations which the transportation companies have formed, and the methods employed by those men known variously as chairmen, commissioners, managers or agents, whom the railroad people have put in charge of these associations.

It should be stated in the first place that while there is no doubt that the majority of these associations are directly in violation of the law as interpreted by the United States Supreme Court, no intelligent or fair minded shipper has any desire to attack them upon that ground for the reason that he recognizes that joint action is necessary in the proper conduct of railroad business; that all rates are practically interdependable, and that without conference and mutual agreement of the roads by means of these associations—every road being a law unto itself in the matter of rates, classification, etc.—there would be absolute chaos in the world of transportation.

The complaint is not that the railroads have formed these associations, but first, that they have put men in charge of them who have no interest whatever in the shippers, no desire to do exact justice as between shippers and the railroads, and no disposition to look at matters of rate or classification fairly and without prejudice, but always with the idea that the higher the rate the greater the revenue to the railroads and the better their interests are served; and, second (and here is the great cause of complaint), that they have in some associations at least, made these managers absolute Czars in their domain, from whose decisions there is practically no appeal. The authority of the general freight agent has, in a great measure, been taken from him and given over to these men. This power is, in some cases, exercised directly by ukase or order. The manager, backed by the authority of the executive officers of the roads, says to the members of his association, do this, or do that, and it is done. But even in an association where this authority has not been directly conferred upon the manager or chairman he is generally able to impose his will upon the members and his rulings become, practically the law of the committee or association. It is a well known fact that the general freight agents of lines in the associations referred to are instructed not to contravene the action of the association. This is not true of all such bodies. In some the members are free to exercise the right of individual judgment and vote, but the chairman has it in his power by recommendation, suggestion, or by inaccurate and incomplete information furnished to the members of his

committee, to influence such legislation as he wishes. Changes in rates and classification (which are nearly always advances) brought about by these methods are by no means of infrequent occurrence, as a great many shippers who have been hurt can testify. The ordinary shipper has no recourse when the rulings of these association managers are adverse to his interests, no matter what merit his contention may have. The only idea of the chairman is that whatever is suggested, proposed or asked by the shipper involves a concession by the roads. That is sufficient for him and he uses all his power, authority and influence to turn the petitioner down.

Let a shipper ask for a ruling on a certain commodity which is not provided for in the classification, or not in a certain kind of package, and the chairman's order almost invariably will be to impose the highest possible rate, and that without regard to analogy, value, bulk, weight or any other of the questions which are considered in the making of a rate. In other words, their practice is to charge, not all the traffic will bear, but the maximum rate, even if prohibitory of movement of traffic. When the matter is presented to the committee for vote, the chairman is there to use all his influence to have his own ruling confirmed. In one association, whose name need not be stated, the shipper is not permitted, excepting in some few special instances, to present his argument orally. He must submit it in writing at least sixty days prior to the date set for the meeting. Otherwise, the subject will not be considered at all unless the shipper succeeds, through the intervention of some influential and interested member, in getting the consent of the High and Mighty Commissioner.

And the shipper who, in person, presents his case to the individual members of the classification committee! How does he fare? After having succeeded in getting an interview with some member, he is told, "You must take this up with the chairman of the committee," "I cannot express any opinion on the matter, but it will receive due consideration at the next meeting provided you have filed your petition with the chairman within the time prescribed."

If the shipper writes to the individual members, presenting his case in full, he gets a few lines in reply to the effect that his letter has been referred to the chairman. If he appeals to the general freight agents of the lines with which he does most of his business he is told, "Yes, you are right. In my opinion you are entitled to what you ask for," "I will do all I can for you, but I cannot take individual action," "the committee must pass upon it." Finally, if the shipper has complied with all the rules of procedure he may have a hearing in a figurative sense. That is, the members of the committee will hear a few remarks from the chairman, something to the effect that "I

have looked into this matter, gentlemen, and, in my opinion, we should make no reduction in the classification. In fact, I think this commodity should be raised one class. It is now too low," and the members of the committee, recognizing the fact that their chairman is a classification expert and knows all about the article which they are passing upon (although he may never have seen the thing itself), duly record their vote as the chairman indicates.

The utter lack of consideration and courtesy to a shipper, who, in his desire to give the chairman full information on a subject of vital importance to him, visits the office of that functionary, is something extraordinary. He may, after several calls, possibly secure an interview with the chairman, but only after he has sent in his card and stated thereon the number of minutes of the chairman's time he will take up. When he leaves the office of the chairman after an interview of this kind it is "dollars to doughnuts" that he is in a state of mind to damn, not only the chairman, but the roads which have put such a man in office and delegated to him all the power and authority in matters of classification, and he immediately becomes an advocate of radical legislation or government ownership.

It may be said that the chairman should not be blamed, as he is only carrying out the instructions of his employers to make no reductions, and to jack up the rates whenever possible, but that does not excuse the spirit of hostility and the lack of courtesy which some of these gentlemen show to a petitioner for what he believes to be just and reasonable rates. The attitude of some of these chairmen or managers when a petition is before them is that of a prosecuting attorney as well as judge. He says, in effect to the petitioner: "You are a liar and thief. I don't believe a word you say. You must prove your innocence or suffer the penalty." Chairmen are not all alike. Some of them are more diplomatic and more courteous than others, but the attitude of all is expressed in the statement made by one of them: "When I was

working for a railroad I had to go to the shippers. *Now they have got to come to me*"; and, unless the shipper's business is of sufficient importance to interest some general freight agent or traffic manager, that is what he has to do. It is within the power of these gentlemen, and they exercise it, to influence action by the members of their association which may put grievous burdens upon the patrons of the associated lines, by recommendations of advances in rates and classification, *without first having asked for information from shippers, without any advice to them that any action is contemplated*, and proceeding upon a theoretical or partial knowledge only, of the traffic or of the commodity in question.

In the matter of claims for overcharge where a question of weight or construction of classification is involved it has become the practice of many of the roads, more particularly in the West, to refer such claims to the chairman of the weighing association or classification committee, and say to the claimant, "Chairman So and So recommends that this claim be declined, and his decision must govern. If you question same, please take it up with him direct." In other words, the roads evade the responsibility in this way and compel the shipper to appear as a suppliant before the chairman of the association, that chairman acting in a dual capacity, passing upon his own rulings in one or the other of the associations of which he is in charge.

In my opinion, the methods of these various chairmen, commissioners and managers have contributed very largely to the feeling of hostility to the railroads which has culminated in the rate legislation now being enacted in Congress.

A great deal more may be said about the methods of these association managers, and there will be no lack of material if the columns of **FREIGHT** are opened to complainants without disclosure of the identity of the writers.

Yours truly,

TRAFFIC MANAGER.

CHICAGO, April 26, 1906.

Basis for the Reciprocal Demurrage Demand

BY GEORGE E. WEST

IN some circles there seems to rest a doubt concerning the legal basis on which the demand for reciprocal demurrage is made. Shippers have been in the habit of considering car service charges in the nature of penalty for failure upon their part to promptly load and unload goods. As laymen, they have not recognized the difference between a penalty and a payment for service. A penalty is money paid by way of punishment, and is not dependent upon the value of the service rendered. The legal basis upon which car service, as enforced today, rests, is that the carrier furnishes storage for goods, which are in the car, if

they have not been removed within the free time, and that it furnishes a place in which to put goods if they have not been loaded within the specified time.

Right to Exact Car Service

The right to exact car service has been upheld upon the theory that every one is entitled to charge a reasonable compensation for services performed or facilities afforded.

What constitutes such a reasonable charge, as well as what constitutes a reasonable time that the carrier must furnish such facilities without making a charge for the detention of equipment, would, under ordinary

circumstances, be a question of fact to be determined by a jury. The courts have, however, in the exercise of their functions, determined that \$1 per day is a reasonable compensation for the use, by a consignee, or the same amount for the non-use by a consignor, of a car. The courts have also held that, for certain commodities, twenty-four or forty-eight hours is a reasonable time in which to unload, and the same time has been held to be a reasonable time in which to load. In short, the courts have simply determined what, under all facts and circumstances in a large number of cases, would constitute reasonableness. The courts are not to be criticised for laying down a broad rule in this behalf. There are many broad rules which the courts have established as matters of law, and which, as a matter of law, are binding upon the community.

The demand for reciprocal demurrage does not ask, as a matter of law, that a carrier be penalized for failure to do a certain act, such as furnish equipment, transport, deliver—all within a reasonable time. The demand has a solid foundation, and simply, in its last analysis, means that the legislatures or the courts determine a broad, comprehensive and general rule of what under all facts and circumstances shall constitute reasonable action on behalf of the carriers. The demand for reciprocal demurrage is no more for a penalty than the exaction of demurrage is for a penalty. Demurrage is collectable because it is a payment for services performed. Reciprocal demurrage is asked for services which are not performed by one whose legal duty it is to perform them. If a cartman agrees to be at my house at 9 o'clock tomorrow morning for the purpose of moving my furniture, and such promise be based upon good and valuable consideration, and he fails, so that I am under the necessity of hiring another, or I am injured by his failure to comply with his agreement, I have a remedy against him. If an attorney undertakes to prosecute a case for me and he fails to perform this service which he undertakes to perform, he is liable for his failure. If one agrees to furnish waiters to serve a banquet and he does not do so, I have a remedy against him. And, in this and all similar cases, the amount which I am entitled to recover is measured by the amount which I have been compelled to lay out to secure the services. And even in some instances exemplary damages are awarded me as a punishment against the offender.

It has been insisted that reciprocal demurrage would be a proper demand were the carriers allowed to compel shippers to load cars *volens volens*, whenever cars were available. If this be so, might not the physician or the lawyer claim that he was entitled to attend the sick or appear as attorney for any person, whether he numbered such an one among his clientage? Of course, the fallacy of this argument is so obvious that no one considers that it is made in good faith.

Statements of Law

The following statements of law cannot be gainsaid:

1. A common carrier by rail is, by virtue of its

business, under a legal duty to furnish equipment, such as cars.

2. And such a common carrier, being a public servant, is under a legal duty to furnish equipment within a reasonable time after request therefor.

3. A common carrier by rail is under a legal duty to forward shipments at a reasonable rate of speed.

4. A common carrier by rail is under a legal duty to deliver to a connecting carrier a shipment within a reasonable time.

5. A common carrier is under a legal duty to deliver goods at destination within a reasonable time. And, in this sense, destination is to include not only the city and place to which consigned, but to have the car "in position," so that the consignee may remove the property.

It is true that:

1. The shipper is under a legal duty to give the carrier reasonable notice of when he shall want equipment.

2. The shipper is under a legal duty not to withhold the equipment, but to load same within a reasonable time, in order that the car may be used for the purpose for which it was intended.

3. The shipper expects, as a matter of right, that his goods will be forwarded at a reasonable rate of speed per day.

4. The shipper and consignee expect the carrier to deliver the goods at destination and place them in position within a reasonable time.

5. The consignee is under a legal duty to discharge and take away from the carrier's premises goods within a reasonable time after their arrival.

The law books are so replete with cases sustaining the above propositions that it is needless to quote from any. The rights are fundamental; those of the carrier largely originate in the nature of its employment and upon which the law throws an obligation; those of the shipper are by virtue of law and due largely to the relations which he bears to the carrier.

One Question to Determine

There is one question which needs determination. It is this: What, under all the facts and circumstances of all the cases, will constitute a reasonable time in which equipment should be furnished, a reasonable rate of speed that the shipment should be moved, and a reasonable time within which goods should be tendered to the consignee at destination. Questions similar to these the carriers have determined for themselves, and their determination has been sustained by the decision of courts. If the shipping public could determine what would constitute reasonableness in the mass of cases, either acting for themselves or through their legislatures, I see no injury that might be done unless such determination should be unreasonable and work a hardship. As the amount which the shipper shall pay by way of car service has been "liquidated," so it but remains to have liquidated the damages which the shipper or consignee sustains by reason of the omission by the carrier to perform its legal duties.

St. Louis Jobbers Ask for a Rate Adjustment

ST. LOUIS jobbers and manufacturers are endeavoring to obtain a rate adjustment and to this end P. W. Coyle, Traffic Commissioner of the Business Men's League, has addressed the following letter to Chairman R. M. Fraser, of the St. Louis Eastbound Freight Committee:

FREIGHT BUREAU, BUSINESS MEN'S LEAGUE,

P. W. COYLE, Commissioner; A. F. VERSEN, Secretary.

St. Louis, Mo., May 11, 1906.

Mr. R. M. Fraser, Chairman, St. Louis Eastbound Freight Committee, City:

DEAR SIR—I am directed by the board of managers of this bureau to express to you, and through you to the representatives of the Eastern lines, their views concerning St. Louis rates, and to say that in the readjustment of the differential rates applying as between St. Louis and East St. Louis and Eastern points the action of the Eastern lines at their meeting here on May 3, in reducing the differentials to 1 cent per 100 pounds on the first four classes and to one-half cent on the other two classes and special commodities, is another step in the right direction.

We refer to this as a step because we are firmly convinced it is only that, and that other steps must be taken before this terminal rate question is settled and settled right. We do not mean by this that the conclusion which we believe to be the right one should be forced at unnecessary expense or sacrifice of revenue. We do believe, however, that the commercial interests of St. Louis—and by the commercial interests of St. Louis we mean all of the interests dependent upon or co-ordinate with the financial interests of St. Louis—should be recognized to a greater extent than is contemplated by this reduction of what has been commonly called the bridge arbitrary. While this bridge and terminal expense must of necessity be recognized, it should not be so taken into account as to be made a factor in maintaining two rates to a common point, but St. Louis, as described, should be made a rate basing point in the broadest sense possible.

In plainer language, perhaps, we should say St. Louis should be the centre of a zone embracing East St. Louis, Madison, Granite City, Venice, etc., on the east side of the river, and Carondelet, Ferguson, Baden, etc., on the west side of the river, the rates to and from which should be the same between any given territory East, West, North or South. This is now the case with the exception of the territory east of the Mississippi River, known as Official Classification territory, which embraces practically all points east of the Indiana-Illinois line north of the Ohio River to the Atlantic Coast, and Illinois and the southern portion of Wisconsin.

Why this exceptional condition is allowed to prevail we cannot understand. We understand, of course, that there is a bridge toll, but we can find no justification for making this bridge toll a part of the through rate any more than any other terminal expense. We are well aware of the fact that, figuratively speaking, the East Side lines have established rates to and from St. Louis proper and have, constructively speaking, established their freight stations in St. Louis in connection with drayage transfer companies. This, however, does not eliminate the objectionable feature, as it still leaves East St. Louis a basing point for St. Louis rates as well as to and from points beyond, because there still remains two bases of rates within the same commercial centre.

To illustrate, fancy two rate bases within the zone of which Chicago is the centre, dividing that territory by one or the other of the branches of the Chicago River, just as the Mississippi River divides the commercial territory of

St. Louis by thus separating it from East St. Louis and other commercially dependent territories; or, suppose a line be drawn at the intersection of any group of railroads using any one of the belt or terminal lines in reaching Chicago and apply a different line of rates, respectively, to the territory east and west of such a line; or, suppose the railroads having their freight stations on the west side of Chicago River at Canal street, etc., should undertake to equalize by a different rate basis conditions as between themselves and the roads having their freight stations in the southern part of the city at Twelfth street, etc., or on Water street, with no river to cross to reach the jobbing centre of the city, and you get a view of what actually prevails within what we must insist is the real St. Louis territory today.

To bring about the establishment of the same rates to and from all points within the St. Louis zone, as described, we believe all interests involved should be carefully considered and no action taken requiring the sacrifice of revenue on the part of the railroads more than may be necessary to adjust the rates with due regard to the competitive relations of St. Louis and other jobbing centres when the rates are thus fixed on the single basis.

Chicago rates territory embraces other cities and also points in Indiana and Wisconsin. New York embraces all of Greater New York and adjacent points as well as a large part of New Jersey. Pittsburg includes all of the large manufacturing points in the Monongahela and Allegheny valleys in that vicinity, as well as points in Ohio and West Virginia, and its territory is divided by two important rivers, spanned by numerous valuable railroad bridges, the maintenance of which must be quite as expensive in the aggregate as are the two used by the St. Louis lines. Buffalo, N. Y., not only embraces adjacent points in the United States, but it is international in character, as it includes points in Canada.

The fact that the Western and Southern lines absorb all of this bridge toll in order to maintain the same basis of rates at St. Louis and East St. Louis, and that the Eastern lines absorb about 66 per cent. of it in order to establish rates to and from St. Louis proper, should be reasonably accepted as admission that in principle the addition of any part of the bridge toll to the through rate is wrong, and that no part of such expense should be segregated from the operating expenses of the railroads any more than the expense of crossing or maintaining a bridge at any other terminal or intermediate point.

This point is particularly emphasized when the fact is taken into account that the fourteen railroads using the bridges and ferries here own or operate them, and are, therefore, not dealing with a foreign or, in a practical sense, separate corporations, but with themselves, and are, therefore, in position to place this expense where, in our estimation, it properly belongs, in the operating account.

A group of five railroads enter Chicago over the tracks of one terminal railroad. These five railroads, we understand, own that terminal railroad, deal with it as a separate corporation, but do not add any portion of the expense incurred to their rates. We fully appreciate the fact that such expenses should necessarily be taken into account in the intelligent establishment of rates, but we believe should not be used as a basis of maintaining two sets of rates within the same commercial centre.

That the single basis should be established within the zone described there is no question with us, and we urge it, not for the purpose of giving St. Louis advantage over others, but because it is right and essential that it should be done in order to give this city the relative commercial standing it should have.

Cowan Wants "In Its Judgment" Retained

THE Hepburn Bill, as it passed the House, provided that the Interstate Commerce Commission, after a complaint and hearing, should "determine and prescribe what will, in its judgment, be the just and reasonable and fairly remunerative rate or rates, charge or charges, to be thereafter observed." In the Senate the words "in its judgment" were, after a long argument, stricken from the bill. The arguments for the omission of these words were that there was no necessity therefor; that the act would give to the Commission a discretion which the legislature could not confer, and as the Commission would exercise its judgment in any event, they were mere surplusage.

A communication has been addressed to the *Washington Times* by Judge S. H. Cowan, of Fort Worth, Tex., in which he states the necessity of retaining these words in the statute. Judge Cowan's communication reads:

"I wish to state my reasons for retaining the words in the Hepburn bill 'in its judgment.'

"The Allison amendment was not needed; no one has been able to make any argument to show its necessity based on a syllable of law except as announced in the Minnesota milk case, which is in no sense applicable to the language of the bill as it stood without the amendment. In fact, the argument for specific court amendment was directed to the point of proving that the law must provide that the court shall have authority to pass on the reasonableness of the Commission's rates. That is what they were after, and that is what they expect to get by the Allison amendment, coupled with striking out the words 'in its judgment.' I believe they will fail in this contention before the court, but I will predict now that the argument before the court will be that the two amendments evidence the intent on the part of Congress to allow the courts to revise the Commission's discretion. I am perfectly clear that if the words 'in its judgment' had been retained, the Allison amendment would not have given the court any greater power than it had; I hope that striking them out will not affect a different construction, but it is to be regretted that it was done, because it injects an element of doubt and uncertainty which otherwise would not, in my opinion, exist.

"This much is certain: Either Congress may delegate to the Commission the discretionary power to fix rates conformable to the standard of their judgment as to what is just and reasonable and what rates are proper to prevent unjust discriminations and undue preferences, or it cannot. If it cannot, the law is void anyway; if it may, then it should make it clear that such discretion is to be exercised, and that it is not to be subject to the standard of the court's judgment except to protect constitutional rights. I marvel at the contention that these words 'in its judgment' would render the law unconstitutional because it delegates the power of Congress. The very same reason applies with equal force to the power to prescribe rates. It goes to the very foundation of the law. The complexity of thought in the mind which declares in favor of the power of Congress to authorize a commission to fix rates and in the same breath declares against the power of Congress to authorize the Commission to fix them according to its judgment as to what is reasonable, is past conception.

"The Allison amendment, coupled with the elimination of these words, may be held to evidence a legislative intent that the Commission's rates must conform to the actual standard of 'just and reasonable,' as declared in the first section, and

give the carrier the right to have the court determine from the facts whether the Commission's rate fit that standard according to the court's judgment on the facts. In this view of it, and it being so clear that the words 'in its judgment' could by no possibility affect the constitutionality of the bill, it is inconceivable that those who favored a narrow court review and who believe Congress can give the power to the Commission to 'determine and prescribe' reasonable rates, should have been so mistaken as to eliminate those words.

"It ought to be made clear that the rates fixed are by the standard of the judgment of the Commission which fixes them up to the point that such rates affect constitutional rights; that at that point the discretion of the Commission ceases and the power of the courts comes into play; rates so fixed should stand upon the same plane as if fixed by Congress itself so far as the court's power to enjoin is concerned. Surely, when it is insisted that an amendment like the Long amendment is proper, to expressly limit the power of the court to constitutional grounds for injunction, it means that up to that point the Commission's discretion is to be the measure of reasonableness. If so, upon what theory can any one object to saying so who believes in the principles of the Long amendment or that that is the effect of the bill without any amendment or with the Allison amendment?

"I am quite prepared to accept it as sound argument that when power is conferred upon a commission to fix a schedule of reasonable rates, that their act in fixing them is administrative of legislative will, hence in its essentials a legislative act, and therefore an exercise of the judgment of the Commission. On this theory it may be urged that the words 'in its judgment' are surplusage, but when it is considered that a provision containing express jurisdiction to hear suits to enjoin the Commission's orders is added to the bill without limiting expressly to those questions which alone could be considered if the act of the Commission is in exercise of a discretionary power, and that the language which makes it clearly discretionary is stricken out, it would lend force to the contention that the court is to measure the Commission's discretion by the court's judgment.

"Again, if the contention is sound that the Commission must of necessity exercise its judgment, what is the objection to expressly saying so? The only plausible objection is that if the statute does expressly say so, then the standard of rates fixed will be the Commission's judgment and not that of the court, except when shown to violate constitutional rights, and that with those express words out of the way the courts will find it plausible to set up a standard of reasonableness according to its own judgment."

National Association of Manufacturers

At its annual convention, the National Association of Manufacturers elected J. W. Van Cleave, of St. Louis, president for the ensuing year, to succeed D. M. Parry. In accepting the office he said:

"I do not know but that you have already overburdened me with good intentions. Most of you know where I stand on all matters that concern our organization; you know that my policy is, that when it is necessary to fight, fight with an axe. And I take it for granted that I will have your unqualified support in my efforts to forward the interests of our association, which, we claim, is being run on lines that are the best for American industries generally."

BEFORE THE INTERSTATE COMMERCE COMMISSION

HEARINGS HELD

April 25-28, 1906, Washington, D. C.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

May 2-5, 1906, Washington, D. C.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

May 7, 1906, St. Paul, Minn.—Village of Goodhue v. Chicago Great Western Railway Company. Rates on wheat and barley from Goodhue, Minn., to Chicago, Ill.

Hastings Malting Company v. Chicago, Milwaukee & St. Paul Railway Company. Rates on hard and soft coal from Superior, Wis., to Hastings, Minn.

Hastings Malting Company v. Chicago, Milwaukee & St. Paul Railway Company et al. Rates on cattle, and on malt, wheat and other grains, from Hastings, Minn., to Chicago, Ill.

May 9, 1906, Columbus, Ohio.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

Star Hame Company v. Baltimore & Ohio Southwestern Railroad Company et al. Unreasonable rates on hames from Blanchester, Ohio, to Montgomery, Ala.

Star Hame Company v. Baltimore & Ohio Southwestern Railroad Company et al. Unreasonable rates on hames from Blanchester, Ohio, to Selma, Ala.

May 9, 1906, Washington, D. C.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

May 10, 1906, Chicago, Ill.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

May 15-18, 1906, Philadelphia, Pa.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

May 23-24, 1906, Philadelphia, Pa.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

May 24, 1906, Cleveland, Ohio.—In the Matter of the Relation of Common Carriers Subject to the Act to Regulate Commerce to Coal and Oil and the Transportation Thereof.

Competitive Rates on Coal

The case of J. J. Marley & Son, of Alexandria, Ind., against the Norfolk & Western Railway Com-

pany, the Hocking Valley Railway Company and the Lake Erie & Western Railroad Company, has recently been decided by the Commission, in an opinion by Chairman Knapp. The decision is in favor of the carriers and dismisses the complaint.

Eight carloads of coal were purchased by the complainants from a firm in Detroit, the coal being shipped during August, September, October, and prior to November 26, 1903, from Glen Alum, W. Va., over the Norfolk & Western, Hocking Valley and Lake Erie & Western roads at the published rate of \$1.90 per net ton. During this period the rate via the Norfolk & Western and Cleveland, Cincinnati, Chicago & St. Louis roads was \$1.65 per ton. It was claimed by the complainants that the rate of \$1.90 was unreasonable and unjust, and should not have been in excess of the rate of \$1.65 in force by the other line, and reparation was demanded in the amount representing the difference in the two rates.

The coal was purchased delivered on board cars in Alexandria, the point of destination. The freight was paid by the complainants and deducted by them when they paid the Detroit firm for the coal. The complainants, therefore, really brought the case on behalf of the selling firm in Detroit. In making the sale to the complainants the agent of the seller understood that the \$1.65 rate would be applied. When the first car was received complainants protested against paying the \$1.90 rate, and efforts were made, through the agent at Alexandria, to secure a reduction in the charge on the basis of the \$1.65 rate, but without avail. Apparently the complainants are located upon or near the right of way of the Lake Erie & Western road, and have a special reason for getting their coal over that road, but upon this point the testimony is not very clear.

According to the Railway Guide mileage, the distance by the route used is 476 miles, while that over the N. & W. C., C. & St. L. route is 447 miles. On November 26, 1903, after these shipments were made, the Norfolk & Western, Hocking Valley and Lake Erie & Western lines reduced the rate to \$1.65, which is still in effect. The rates over the above lines remained the same until June 1, 1904, when the N. & W.-C., C. & St. L. line lowered the rate to \$1.55. The rate from Glen Alum to Chicago, 556 miles, short line distance, is \$1.90, equal to 3.4 mills per ton mile. The \$1.90 rate to Alexandria yielded a ton mile rate of 3.8 mills over the Lake Erie & Western route, while the \$1.65 rate afforded 3.7 mills over the N. & W.-C., C. & St. L. line. Over the Lake Erie & Western route the \$1.65 rate gives about 3.5 mills per ton per mile. The conclusions of the Commission are as follows:

No other material evidence was presented, and we are practically confined to consideration of the rate itself as applied to the route in question, and the fact

that a lower rate was in force over a shorter line, which has since been made effective on this route, while the short line has also reduced its rate.

We cannot find upon this record that the rate of \$1.90 over the defendants' line was an unreasonable charge. There is no provision in the law requiring that rates shall be the same over all lines between the same points, and the existence of a lower rate by the short line in this case, while having some bearing, does not of itself indicate the unreasonableness of a higher rate by the route actually used. The rates by both lines were published; there is no showing that the use of the cheaper routes was denied to these shipments, and if the carriers in the through route over which the coal was transported had granted a rebate on this coal to the basis of the \$1.65 rate over the competing line while they had the \$1.90 rate in effect over their own line they would have been guilty of a penal offense under the statute. The complaint must be dismissed.

Legality of Contract Rates

On the 14th of May the Supreme Court handed down a decision in the case of *The Texas & Pacific Railway Company v. Mugg & Dryden*, on appeal from the Court of Civil Appeals of Texas. This decision is of considerable interest to shippers in general, as bearing directly upon the right of a shipper to recover from a railroad company damages equal in amount to the difference between the rate quoted to the shipper by the railroad company's agent, and upon which the shipper relied in contracting for the sale of his commodity, and the published tariff rate of the railroad company, as filed in compliance with the provisions of the Act to Regulate Commerce. The statement of facts, as set forth in the decision of the Supreme Court, is as follows:

"The cause originated in the Justice Court, from which it was appealed to the County Court of Tarrant County, where a trial was had on the following statement of appellees' cause of action, to wit: 'Statement of plaintiff's cause of action. Damages in the sum of \$140.18, as follows: By reason of defendant making and quoting to plaintiffs a rate of \$1.25 per ton on two cars of coal, and \$1.50 per ton on one car of coal, in January and February, 1903, respectively, from Coal Hill, Ark., to Weatherford, Tex., on which rates so made and quoted to plaintiff plaintiff relied in contracting said coal shipped and sold at prices based on said rates; whereas defendant assessed and collected of plaintiff freight at the rate of \$2.75 per ton on said two cars and \$2.85 per ton on said one car, which said freight rate plaintiff was forced to pay and did pay under protest in order to obtain said coal and deliver the same, in compliance with sales previously made. That plaintiff's loss and damage in the sum aforesaid were occasioned by defendant's negligence in making and quoting to plaintiff the said rates, on which rate quoted defendant knew plaintiff relied and based their sales of the said three cars of coal shipped and sold

thereafter, and then forcing plaintiffs to pay a greater rate, amounting in the aggregate to the sum of \$140.18, on said three cars of coal, thereby causing plaintiff's loss and damage in the said sum.'"

To this pleading the railroad company answered by general demurrer and general denial, and especially denied that it ever entered into any contract for the shipment of coal for the plaintiff from Coal Hill, Ark., to Weatherford, Tex., at the rate alleged in the plaintiff's statement; and further, that if it ever quoted any such rate to the plaintiff, such quotation was a violation of the Interstate Commerce Act and was a lower rate than the interstate rate in effect at the time shipment was made, which had been duly published, printed and posted in its depot and stations, as required by the terms of the act; and further, that it collected from the plaintiff the exact rate prescribed for such commodity under such act, and that such contract, if any was made, was in violation of law and void. Upon a trial without a jury, judgment was rendered for the shippers for the amount sued for and all costs of suit.

It was agreed by the parties that the rate charged and collected on the shipments of coal in controversy from Coal Hill, Ark., to Weatherford, Tex., as shown in the appellees' statement of cause of action, was the regular rate in effect at the time the shipments were made, as shown by the printed and published schedules of the Texas & Pacific Railway Company, on file with the Interstate Commerce Commission, and posted in the stations of the railway company, as required by the Interstate Commerce Act. There was no assignment challenging the sufficiency of the evidence to support the material allegations of the carrier's pleadings.

The Supreme Court of Texas having answered that the railroad company was liable for "damages occasioned by the misrepresentation of the rate of freight as shown by the statement of facts," the Court of Civil Appeals affirmed the judgment against the railroad company. Thereupon a writ of error to the Supreme Court of the United States was prosecuted.

The decision of the Supreme Court of the United States, which was delivered by Mr. Justice White, is as follows:

This case is within the principle of and is ruled by the decision in *Railroad Co. v. Hefley* (158 U. S., 98). Upon the authority of that case the Supreme Court of Alabama denied the liability of a railroad company in a case of similar character to that under review. (*Southern Ry. Co. v. Harrison*, 119 Ala. 539.) The opinion of Chief Justice Brickell so aptly reviewed and declared the effect of the decision in the *Hefley* case that we adopt the same in disposing of the present controversy. The Alabama court said:

"In *Railroad Co. v. Hefley* (158 U. S. 98) the plaintiff sued to recover damages for the refusal by the carrier to deliver goods consigned to him, after tender of payment of the stipulated charges named in the bill of lading. The goods (a lot of furniture) had been received by the carrier at St. Louis, Mo., for

transportation to Cameron, Tex., at a stipulated rate, specified in the bill of lading, of 69 cents per 100 pounds, the charges amounting to \$82.80, whereas the published schedule rate in force at the time was 84 cents, and the charges should have been \$100.80; and the plaintiff, as in this case, was ignorant of the fact that the rate obtained was less than the schedule rate. It was held, in an opinion by Brewer, J., that the plaintiff was not entitled to recover. It is true that the only question discussed in the opinion was whether or not the Interstate Act superseded the Texas statute, which prohibited a common carrier from charging and collecting from the owner or consignee of freight a greater sum than that specified in the bill of lading, and this question was decided in the affirmative. * * *

But this was not the only effect of the decision, and it is by its effect on the rights of the parties to such a contract, by whatever process of reasoning the decision may be reached, that the State courts are bound. The clear effect of the decision was to declare that one who has obtained from a common carrier transportation of goods from one State to another at a rate, specified in the bill of lading, less than the published schedule rates filed with and approved by the Interstate Commerce Commission, and in force at the time, whether or not he knew that the rate obtained was less than the schedule rate, is not entitled to recover the goods, or damages for their detention, upon the tender of payment of the amount of charges named in the bill of lading, or of any sum less than the schedule charges; in other words, that, whatever may be the rate agreed upon, the carrier's lien on the goods is, by force of the act of Congress, for the amount fixed by the published schedule of rates and charges, and this lien can be discharged and the consignee can become entitled to the goods only by the payment, or tender of payment, of such amount. Such is now the supreme law, and by it this and the courts of all other States are bound. * * *

The judgment of the Court of Civil Appeals for the Second Judicial District of Texas was reversed and the case remanded to that court for further proceedings not inconsistent with the above opinion.

Staking and Racking of Lumber Shipments

A complaint has been filed with the Commission by the Pacific Coast Lumber Manufacturers' Association and other associations of lumber dealers and manufacturers, including the Lumbermen's Association of Chicago, the Northwestern Cedarmen's Association, the National Wholesale Lumber Dealers' Association, the National Hardwood Lumber Association, the Southern Cypress Manufacturers' Association, the Southwestern Washington Lumber Manufacturers' Association, the Northern Pine Manufacturers' Association, and the Hardwood Manufacturers' Association of the United States, against the Atchison, Topeka & Santa Fé Railway Company and practically all the other carriers in Western Classification territory, com-

plaining of the rules and regulations of the carriers, which require shippers of lumber to stake and rack the cars at their own expense.

The complainants claim that they and the shippers whom they represent deliver great quantities of lumber and forest products to the carriers, to be transported by them between interstate points on flat and gondola cars, and that it is the duty of the carriers to properly equip such cars to carry such freight safely to its destination. It is alleged that the carriers exact a higher rate of freight for transporting lumber and forest products than they do for transporting other freight in lesser quantities, such as coal, coke, grain, cattle, etc., and that for the latter commodities the railroad companies provide cars properly equipped at their own expense. It is claimed that the carriers have established a minimum carload weight on lumber shipments of 24,000 pounds, and that they require the shippers to furnish, at their own expense, stakes, racks or car equipment of sufficient size and strength to hold such lumber or forest products in place on the cars while in transit, and to protect the property of the railroad companies; that the cost of this temporary equipment averages about \$5 per car, and aggregates a very large sum each year; and that the shippers of lumber and forest products are required to pay freight upon this temporary equipment, which weighs about 1,000 pounds. These regulations and practices of the carriers in regard to the shipment of lumber are claimed to result in total charges for its transportation which are unjust and unreasonable, and in violation of the provisions of the Act to Regulate Commerce.

Unreasonable Rates on Waste

The Riverside Mills, of Augusta, Ga., has filed a complaint with the Commission against the Southern Railway Company and other railroad companies and steamship companies forming through lines between Augusta and New York, complaining of the rate on waste between these two points. The present through rate on this traffic is 41 cents per 100 pounds. It is claimed that for about ten years prior to December 15, 1897, the rate was 37 cents per 100 pounds, but was on that date increased to 39 cents, where it remained until March 11, 1900, when it was increased to the present rate of 41 cents, and that considerable factors in causing this alleged unreasonable increase in the rate are exorbitant terminal charges exacted at Savannah, Charleston and Norfolk, and an excessive charge for marine insurance, for which no sufficient consideration is given, such terminal and insurance charges being included in the rate.

It is also alleged that prior to the leasing by the Southern Railway Company of the South Carolina & Georgia Railroad, in May, 1899, the complainants were able to have their waste transported to the Eastern markets at the former more reasonable rates, by reason of the competition which then existed, but that this competition has been destroyed by the Southern Rail-

way Company since it has gained control of the South Carolina & Georgia Railroad Company. It is claimed that the present adjustment of rates subjects the complainants to the payment of unreasonable rates of transportation, and to undue and unreasonable prejudice and disadvantage, in violation of Sections 1 and 3 of the Act to Regulate Commerce.

The Coal and Oil Investigation

During the past month the Commission has continued the investigation ordered by the joint resolution of Congress, approved March 7, 1906, into the relations of common carriers to coal and oil properties, and the transportation of these commodities. Hearings have been held at Washington, D. C., on April 25, 26, 27 and 28, on May 2, 3, 4 and 5, and May 9; at Columbus on May 9; at Chicago on May 10; and at Philadelphia on May 23, 24 and 25, and at Cleveland on May 24. At the date this statement was prepared the hearings are being continued at Cleveland and Philadelphia. The matter of the transportation of oil was considered at the hearings in Columbus and Chicago, and the hearings at Washington and Philadelphia have continued the investigation into the Eastern bituminous coal situation, dealing not only with the rates and practices of the carriers, but also with the personal relations existing between officials of the coal carrying roads and the shippers whom they serve.

One of the first witnesses examined at the Washington hearings was T. S. Davant, freight traffic manager of the Norfolk & Western Railway Company. In explanation of the failure of his company to compete for the carriage of coal to Washington, Mr. Davant said that at one time the Chesapeake & Ohio, Baltimore & Ohio and Pennsylvania gave the Norfolk & Western to understand that if it came into Washington they would enter the Norfolk & Western territory. Upon being asked if he had ever attended a conference between the tidewater and all-rail line representatives concerning New England rates, he said that he had attended a meeting some time prior to April 1, 1905, at which were present Mr. Newman, of the New York Central; Mr. Murray, of the Baltimore & Ohio; Mr. Prevost, of the Pennsylvania, and Mr. Stevens, of the Chesapeake & Ohio. The relative adjustment of rates on all-rail lines and tidewater lines to New England were the subject of discussion at this conference, and he said the all-rail lines were under the impression that the tidewater lines were getting too much of the business, and wanted their rates raised. Asked if it was proposed that the all-rail lines should lower their rates if the tidewater lines did not raise theirs, he said there was an intimation to that effect, but that subsequently he received word from his executive officers that the existing rates would be continued.

"The commercial and trade relations of this country," declared Mr. Davant, "cannot be carried on unless there is some sort of an understanding between the railroads as to rates."

W. T. Noonan, general superintendent of the Buffalo, Rochester & Pittsburg Railroad Company, testified that the Buffalo, Rochester & Pittsburg Railroad Company owns practically all the stock of the Rochester & Pittsburg Coal & Iron Company, which company, in turn, controls the Jefferson & Clearfield Company. Mr. Noonan stated that over one-half of the coal transported over his road was shipped by the Rochester & Pittsburg Coal & Iron Company. He claimed that there was no discrimination by his road in favor of any shipper, and that they furnished all the cars any operator wanted. The policy of the road, he added, was to encourage the development of new mines.

Mr. Noonan was followed by Mr. Tyler, of Buffalo, statistician of the Bureau of Bituminous Coal Statistics, Buffalo Division. Connected with this association, the witness said, were the Pennsylvania, Lake Shore, Buffalo, Rochester & Pittsburg, Erie, and Bessemer and Lake Erie roads. He furnished a statement showing the amount of coal and coke carried by each of these roads since the organization of the bureau.

John B. Thayer, fourth vice president of the Pennsylvania Railroad Company, appeared before the Commission at this hearing and offered an explanation in regard to the various statistical bureaus supported by the coal carrying roads for their mutual information. Four associations had been formed, said Mr. Thayer—the Tidewater Association, the Eastern New York All-Rail Association, the Buffalo Conference and the Western Pennsylvania Conference, all about 1895. The preceding period, he said, was one of rebating so general as to threaten the railroad's prosperity, and to stop this the associations were formed. This being before the Supreme Court of the United States had interpreted the Sherman Anti-trust law, no railroad man thought the existence of such associations violated the law, the "atmosphere surrounding their birth being perfectly honest."

A number of shippers also appeared at these hearings and offered testimony tending to show discrimination in the distribution of cars.

Daniel Howard, manager of the O'Gara Coal Mining Company, whose mines are near Clarksburg, W. Va., testified that he understood telegraphy, and that he overheard a message from the superintendent of a division of the Baltimore & Ohio to a trainmaster, giving preference to certain mines, and that when the preferred mines got their cars there were none left for his mine. He said that he took the matter up with Mr. Hale, superintendent of transportation, since which time he had received better treatment.

J. L. Lewis, of the Federal Coal & Coke Company, near Fairmont, testified that they had not been able to operate to their full capacity because they could not get enough cars.

A. C. Fulmer, who was formerly in the coal busi-

ness near Morgantown, W. Va., testified that he had been "squeezed out."

THE CHICAGO HEARING

As above stated, the testimony adduced at Chicago related to the methods and business practices of the railroads in the transportation of oil. This naturally involved some consideration of the business methods of the Standard Oil Company. It was rumored that, on account of the possibility of action being taken by the Department of Justice as a result of the recent report of Mr. Garfield, Commissioner of the Bureau of Corporations, on the transportation of petroleum, certain leading officials of the railway companies and of the Standard Oil Company had been excused from appearing before the Commission, the Government not wishing to treat these gentlemen to an "immunity bath." At any rate, the greater part of the testimony was given by independent oil operators and former employes of the Standard Oil Company.

One of the first witnesses called was Mr. M. Maxon, of Decatur, Ill. Maxon was employed by the Standard Oil Company from 1876 until 1903, being at the time he left the service of the Standard one of its district managers.

He testified that it was customary for him to be given between seventy and eighty annual passes from railroads in his territory to be given to the sales agents of the Union Tank Line. In general, he stated that the Standard Oil constituent companies had certain territory assigned to them, and into this territory the agents of no other Standard Oil company were permitted to go. Asked how the Standard Oil Company drove its competitors out of business, the witness replied:

"Various methods were employed, but the main one was by means of dummy companies, which were organized to operate in a territory as independent concerns, and with instructions to get certain business which was being done by competitors."

"Do you know of the organization of any such companies?"

"I do. In my territory there were organized for this purpose the Paragon Oil Company, the Banner Oil Company, the Charles Kercher Oil Company and the Springfield Oil Delivery Company."

"What was the method pursued by these dummy companies?"

"I secured five girls, and with these I had a house to house canvass made, with a view of ascertaining who purchased oil, how much they used, and from what dealers they purchased it. This canvass gave us exact information as to what quantity of Standard Oil products was used and how much independent products. The record was given to Charles Kercher and John Maxon, and they were told to go out and get the business which the independent companies were securing in these cities."

"How did they do it?"

"Agents of the dummy Standard Oil companies were sent to the consumers direct with instructions to

convince them that their oil was the best. This was accomplished largely by tests by experts. An expert can take two lamps exactly alike, fill with the same oil, and make one burn very brightly, while the other will burn very poorly."

"Were the agents of these companies instructed to tell the consumer they represented independent companies?"

"They were, and did so in all cases. When the work for which the company was organized was accomplished, the concern would be disbanded or absorbed."

Asked if he had ever secured special rates from the railroads, the witness said he had frequently done so, and that they amounted to between 50 and 70 per cent. less than the open published tariff.

"When did these special rates cease?"

"In 1899 or 1900."

"How did you secure these special rates?"

"By telling the railroads that the combination of rates was such through Decatur that I would have to ship from Indianapolis. They feared a loss of the traffic."

Mr. Wilhoit, formerly an employe of the Standard Oil Company, related a number of instances in which clerks of the various railroad companies had been bribed to give information concerning shipments by independent concerns, but said that, so far as he knew, this practice ceased in the latter part of 1896.

A number of other witnesses were called and offered testimony concerning the business methods of the Standard Oil Company, but not relating directly to the practices of that company in relation to the transportation of their products.

E. P. Ripley, president of the Atchison, Topeka & Santa Fé Railway Company, was examined at this hearing, and his testimony opened with the production of three contracts between the Standard Oil Company and the Santa Fé, providing for the laying of pipe lines on the Santa Fé right of way. In Kansas the Santa Fé got \$40 a mile for this privilege, and between Kansas City and Joliet, Ill., \$50 a mile.

"Can you say what Standard Oil officials are directors of the Santa Fé?"

"Only one, Henry H. Rogers," replied Mr. Ripley.

"Is there any arrangement between the Santa Fé and the Standard whereby you receive revenue from the transportation of oil in their pipe lines on your right of way?"

"No."

"Then all you get is the amount named in the contract?"

"Well, we get one or two other things by virtue of an individual agreement. Outside of the contract it was agreed that all pipe and supplies to be used in the construction of the pipe line should be transported over our railroad. This amounted to about \$250 a day. Then the pipe line stations use four or five cars of coal a week, and it was agreed that we should transport that. I didn't want to see the pipe

line built, for it took away our oil business, but inasmuch as it was bound to be built, I thought it might as well be on our right of way, in order to bring us their business. We'll be glad to take on as many more pipe lines as our right of way will accommodate, whether they are Standard or independent. The offer is open to all."

"Have you any information as to how much cheaper it is to transport oil by pipe line than by rail?"

"I know that the rail rates could not approximate the pipe rates. I tried to see if I could not stop the construction of the pipe line by lowering the railroad oil rates, but it was out of the question. We couldn't begin to transport oil as cheaply as the pipe line company."

Mr. Ripley declared that his road had never obstructed the crossing of their right of way by independent pipe lines. He also denied that passes were given generally to Standard employees.

J. Bartles, an independent oil dealer of St. Paul, Minn., gave testimony tending to show that the Standard Oil Company occasionally paid an excessive freight charge on its oil, which it afterward received back from the railroads. According to Mr. Bartles, the Standard, through its subsidiary company, the Galena Oil Company, sold about \$60,000 worth of oil a year to the railroads, and at prices away above the market price, so that the excessive profit offset the excess in the freight rate, while the high freight rate completely throttled the competition of independent oil dealers.

Mr. Bartles testified that, before the building of the Standard Oil Company's refinery at Whiting, Ind., the freight rate on oil from Chicago to St. Paul was 12 cents, and sometimes went as low as 10 cents. The rate from Cleveland and other Ohio points, from which the independent dealers draw their supply, was 22 cents, made up of the 10 cent rate from Cleveland to Chicago and the 12 cent rate from Chicago to St. Paul. After the Whiting refinery was started, the rate from Chicago to St. Paul was raised to 20 cents, the present figure, increasing the rate from Cleveland for the independent dealers by 10 cents.

"We went to Mr. Stickney," said Mr. Bartles, "and asked for a reduction in this 20 cent rate. His reply was that there was no use in reducing the rate, as the Standard Oil Company was perfectly satisfied with it; in fact, had advocated making the increase. I suggested to him that the Standard Oil might well be satisfied to pay a 20 cent freight rate, because the Great Western bought all of its engine, car and cylinder oil from the Standard. It is a fact that the Great Western gave the Standard Oil all its business on lubricating oil, and it amounted to from \$50,000 to \$60,000 a year, possibly more, and at such prices the velvet was good. The Standard Oil Company could well afford to pay 20 cents on oil if it could get the lubricating business of the railroads."

THE PHILADELPHIA HEARINGS

The inquiry during the hearings in Philadelphia

was directed mainly to the matter of discrimination in the furnishing of cars, and to the personal relations existing between railroad officials and the coal companies, particularly in the matter of ownership of stock in the coal companies.

At the hearing on May 15 it was shown, from the distribution sheets of the Baltimore & Ohio, that from October 14 to November 7, 1905, the Merchants' Coal Company was given, all told, 299 cars more than its percentage. During this period the accumulated overs and shorts were twice wiped off the distribution sheets. During last summer the Merchants' Coal Company had 3,079 cars over its percentage, while the Garrett Coal Company was 473 under and the Stoner Coal Company 191 cars under, because of "shortage in cars."

During the second day of the hearing in Philadelphia, George W. Creighton, general superintendent of the Pennsylvania Railroad Company was put on the stand. He testified that in 1903 the general officers of the company cut off supplies of cars from all independent coal mines and companies and distributed the railroad's entire available number of coal cars among favored concerns. Testifying concerning this action, Mr. Creighton said:

"At a conference held in January, 1903, between W. W. Atterbury, general manager; M. Trump, general superintendent of transportation, and myself, it was agreed that, out of the five or six hundred shippers on our lines thirty or forty companies should be selected, and that for a period of six weeks they should get all the cars distributed."

"Do I understand that you thus cut off from car supply all coal shippers on the Pennsylvania Railroad except those in this selected list?" inquired counsel for the Commission.

"Yes; this was thought, after full consideration, to be a proper thing, in view of the congestion on the railroad, and the consequent inability to move all traffic and to protect consumers."

"Then the company discarded the interests of a large part of its shippers to take care of coal consumers?"

"We admit that," answered Francis I. Gowen, general solicitor of the Pennsylvania Railroad Company.

Among the firms which Mr. Creighton remembered to have included were the Berwind-White Company, Keystone Coal & Coke Company, Jamison Coal & Coke Company, and others.

Mr. Creighton testified that he held stock in seven coal companies, aggregating 1,257 shares, as follows: Saltsburg, 200 shares; Mitchell-Watson, 667 shares; Cochran, 250 shares; Kettle Creek, 50 shares; Commercial, 33 shares; Big Bend, 17 shares; and Monterey, 40 shares.

"Where did you get the Saltsburg?"

"In 1904 I got 200 shares from Captain Hicks, paying \$5,000."

"That is half the par value. Does it pay dividends?"

"Yes; from 12 to 20 per cent."

"Where did you get the Mitchell-Watson stock?"

"It was given to me by my brother-in-law, James P. Watson. There have been no dividends."

Mr. Creighton then testified that all the other stock had come to him as gifts from J. Henry Cochran, in the case of the Cochran and Kettle Creek, and from M. C. Watson, in the case of the Big Bend. Several of these companies have been paying from 10 to 20 per cent. dividends.

"How do you account for all these gifts," asked Commissioner Clements. "Was it pure love and affection that prompted them?"

"I suppose so."

Another witness at this hearing was John M. Jamison, president of the Jamison Coal & Coke Company. This is a large concern, with \$3,750,000 stock, \$2,000,000 bonds, owning 6,000 acres of coal lands in the Greensburg district, and shipping 1,800,000 tons of coal per annum, of which the Pennsylvania Railroad takes 400,000 for fuel.

About six years ago, Mr. Jamison testified, when the company was organized, 500 shares of stock was issued to J. R. McGinley, of Pittsburg, to be given to Robert Pitcairn, assistant to the president of the Pennsylvania Railroad. Pitcairn would not take the stock, but "wanted the money," and Mr. Jamison gave his check for \$5,000 to McGinley.

"Why should the money have gone to Mr. Pitcairn?" asked Commissioner Prouty.

"Well, McGinley thought he would be a useful man for the company. The car situation was so bad that we had to do something to improve it."

"For whom do you hold 400 shares of the Jamison coal stock?"

"Half of it, 200 shares, par value \$10,000, for Edward Pitcairn, freight trainmaster of the Pittsburg division, and 200 shares for R. L. O'Donnel, now general superintendent of the Buffalo & Allegheny Valley division."

"Did any other officers get stock for nothing?"

"None, except George W. Clark, car distributor of the Pennsylvania Railroad Company, who has 100 shares, and Joseph Boyer, chief clerk to A. W. Gibbs, general superintendent of motive power. He got 200 shares."

It is through Mr. Gibbs' office that the Pennsylvania Railroad buys its locomotive fuel. The Jamison coal stock is paying 12 per cent. dividends.

W. A. Patton, assistant to President Cassatt, was examined on May 23, and his testimony, which was lengthy, brought out the fact that he had acquired 6,140 shares of stock in coal mining companies, the par value of which is \$307,000, without cost to himself. Mr. Purviance, chief clerk to Mr. Patton, admitted that he held 770 shares in various coal companies, valued at \$38,500, for which he paid no cash. J. K. Johnson, superintendent of the Tyrone division of the Pennsylvania Railroad, testified that he was in no way interested in any coal company. Vice President Rea admitted having large holdings in coal com-

panies, acquired principally through his connection with development companies, which he defended as proper. Vice President Green testified that he held no stock in coal companies.

At the conclusion of a meeting of the board of directors of the Pennsylvania Railroad Company, held on May 23, the following formal statement was given out:

"The recent developments at the hearing in progress before the Interstate Commerce Commission in this city, in respect to the acquisition and ownership of the stock of coal companies located on its lines by officers and employees of the company, and the acceptance of gratuities by its employees, are a surprise to the management; and while it is not believed that these have caused injustice to the public or the company, the facts with respect thereto will be thoroughly investigated, and no ownership or practice calculated in any manner to affect the full and impartial discharge of the duty owed by the company, its officers and employees, to the public, will be tolerated."

The chairman of the board appointed as a committee to conduct the investigation thus instituted C. Stuart Patterson, James McCrea, Effingham B. Morris, W. H. Barnes and Thomas De Witt Cuyler.

At the Philadelphia hearing on May 25 further testimony was given by officials and employees of the Pennsylvania Railroad Company in regard to their holdings of stock in and relations with the various coal companies. J. Howard Patton, of Greensburg, Pa., a brother of William A. Patton, assistant to President Cassatt, testified that he owned \$67,000 worth of coal stocks, which had cost him nothing. These holdings are 400 shares of the Atlantic Crushed Coke Company; 350 shares of the Keystone Coal & Coke Company; 350 shares of the Howard Gas Company, and 100 shares of Huron. While he is now president of several coal companies and superintendent of the Claridge mines of the Keystone Coal & Coke Company, Mr. Patton has, since 1886, under an arrangement made then with Robert Pitcairn, continued on the pay roll of the Pennsylvania Railroad as station agent at Claridge. For this he receives \$25 a month salary, but the work being done by another man, Mr. Patton stated that the money goes to this man. Mr. Patton is under bond to see that the duties of his railroad position are properly performed.

"When you order cars for the Claridge mine, is it as station agent of the railroad or as superintendent of the mine?"

"I act as superintendent. Cars are ordered at Greensburg by 'phone to our office there."

Probably the most important testimony offered at this hearing was that of John Lloyd, of Altoona, president of the Columbia Coal Company, of which J. Gardner Cassatt is secretary, and a member of the firm of Cassatt & Co., bankers. Mr. Lloyd testified that in 1893, upon the organization of the Altoona Company, he gave \$25,000 of stock to F. L. Sheppard, then general superintendent of the Pennsylvania Railroad at Altoona, and \$10,000 of stock to W. C. Snyder, of the Pittsburg division. These stocks were issued

in the name of John Lloyd, he handing over the certificates with blank powers of attorney.

"Why was the stock kept in your name, Mr. Lloyd?" asked counsel for the Commission.

"It was not desired to advertise that the railroad men held stock."

Referring to gifts of stock by Mr. Lloyd to Mr. Sheppard, counsel for the Commission inquired:

"And you gave him \$25,000 of stock because he was with the Pennsylvania Railroad?"

"Yes; I thought it was a good business move."

Whether or not it was a good business move, the further testimony of this witness brought out the fact that his coal properties had been wonderfully successful, as was shown in his account of the profits made by the Columbia Coal Company, in which many railroad men were interested. Only 10 per cent. of the capital stock was paid in, yet this company paid in ten years dividends amounting to 109 per cent. upon the capital stock; placed 56 2-3 per cent. in the treasury on account of payments upon stock; or, in other words, paid 165 2-3 per cent. upon the capital or stock. Upon the actual money invested it paid ten times this, or at the rate of 165 2-3 per cent. per year.

Frederick Vrooman, assistant trainmaster of the Tyrone division, confessed to having received presents of from one to twenty dollars from operators who desired more than their fair share of cars. He testified in part as follows:

"These fellows used to drop around and drop a one or five dollar bill in my pocket or hand occasionally. I gave them nothing in return for it, but I always took it when it came. If they wanted to give it I was there to take it. I always have been."

George Scott, president of the Puritan Coal Company, was the last witness of the day. He told of visiting general superintendent of transportation Trump at the Broad Street Station and complaining about car distribution, to which he received the following reply from Mr. Trump:

"There is no use of bringing up the Berwind-White Coal Company. We are going to protect them at all hazards."

The witness also told of his having discovered how train dispatchers and others were selling cars to the operators. He said he had brought these matters to the attention of Mr. Trump and Mr. Creighton, of the Pennsylvania Railroad Company, but had received no satisfaction. In consequence of this failure on the part of officials of the Pennsylvania Railroad Company to correct such evils, Mr. Scott said he was forced to give money to trainmasters and finally to buy private cars. Mr. Scott also exhibited a promissory note for one hundred dollars, given to him by David Steel, a Pennsylvania Railroad train dispatcher. He said Steel came to him for money, and he gave Steel the money because he wanted cars. The note, he said, had not been paid, nor had any interest been paid upon it.

More interesting testimony in regard to the prac-

tices of the Pennsylvania Railroad Company was brought out at the Philadelphia hearing of May 25. F. Albert Von Boyneburgh, formerly a mine operator, made a positive statement to the effect that President Cassatt, of the Pennsylvania Railroad Company, was responsible for orders issued to various minor officials which resulted in the ruining of his coal business, and that in many instances the business which he had lost had been gained by the Berwind-White Coal Company and the Keystone Coal & Coke Company, the two mining organizations known as the Cassatt companies. This witness further stated that officers of the Pennsylvania were working in the interests of the Keystone Coal & Coke Company, and that from one of his customers he had learned that an officer of the Pennsylvania Railroad had endeavored to have the customer take this business from Von Boyneburgh and give it to the Keystone Coal & Coke Company, of which Robert Kelso Cassatt, son of President Cassatt, is the Eastern sales agent.

O. A. Knipe, auditor of coal freight receipts for the Pennsylvania Railroad Company, testified that a considerable amount of the Berwin-White coal was carried without being weighed by the railroad company, the weight upon which settlement was made being a certain percentage above the marked capacity of the car. The witness was of the opinion that this average weight was fairly correct, although it was shown that cars could be and frequently were loaded with an amount of coal in excess of the weight so estimated.

The investigation into the practices of the carriers in regard to the transportation of oil was continued at Cleveland also on the 25th, and considerable testimony was given by independent oil refiners and others concerning the business methods of the Standard Oil Company.

REBATERS AT KANSAS CITY

On May 23, 1906, in the United States District Court at Kansas City, Mo., the cases of United States v. George H. Crosby, George L. Thomas and L. B. Taggart, and United States v. George L. Thomas and L. B. Taggart, were called for trial, and some testimony of unusual interest has been developed. Indictments in the above case were returned by the Federal Grand Jury on December 15, 1905, charging that the defendants were guilty of granting and receiving rebates on shipments of freight, in violation of the provisions of the Elkins law, and also guilty of conspiracy to violate that law, under Section 5440 of the Revised Statutes. George H. Crosby is traffic manager of the Chicago, Burlington & Quincy Railway Company, George L. Thomas is a "freight broker," of New York, and L. B. Taggart is his clerk.

Thomas, according to the testimony, was employed upon a salary basis by various large shippers in and about Kansas City, in the capacity of traffic manager, and he also attended to the adjustment of all claims

of his employers against the railroads for damage, overcharges and the like. The principal witnesses were George A. Barton, of Barton Brothers Shoe Company; George W. Taylor, of Robert Keith Carpet & Furniture Company; E. W. Freyschlag, of the Freyschlag Mercantile Company; T. H. McKittrick, president of the Hargadine-McKittrick Dry Goods Company, and Walter L. Kelby, of New York, formerly a clerk for Thomas.

The testimony was to the effect that the various firms who employed Thomas received large sums from mysterious sources after freight bills had been paid, sometimes in express packages, and always from New York. Freyschlag admitted an agreement with Thomas whereby his firm was to receive 25 per cent. rebates on freight bills, and told how the money was deposited in New York to the firm's credit by one "Jackson." The total amount received in three years was about \$7,500. Freyschlag said that the rebates for 1905 shipments are still due, but that he does not know who owes them to him. The witness admitted that he had agreed to use the name "Jackson" because "he thought there might be something criminal in this business."

"All the shippers here are in the same box with me," Mr. Freyschlag explained. "This thing has been going on for twenty-five years—not at 25 per cent. rebates, but at 40 per cent."

George Barton, of Barton Brothers Shoe Company, told of contracts with Thomas to route freight and to "attend to claims." His firm, he said, never received money from Thomas, but did receive some from W. B. Kelby, Thomas' clerk, and more through the mails and by express. The witness said that, after paying his freight bills in Kansas City, he sent them to Thomas in New York city. The firm paid Thomas $2\frac{1}{2}$ cents a hundred pounds commission on all of its shipments, amounting to about \$1,500 in two years, in addition to \$500 yearly salary.

George W. Taylor, of the Robert Keith Furniture & Carpet Company, told of conditions and transactions between his firm and Thomas. He testified that George H. Crosby, traffic manager of the Burlington, had admitted to him that the Burlington paid Thomas a salary because "of the tonnage he controlled."

Mr. McKittrick said that his firm had, within four or five years, received about \$10,000 from unknown sources, some of it by express, during which time they had paid out \$480,000 in freight charges. Mr. J. K. Burnham, president of the Burnham-Hanna-Munger Dry Goods Company, testified to hiring Thomas at a salary of \$1,000 a year, and admitted having received \$43,000 from Thomas in the past three years, supposedly for mistakes in classification, claims for damage, etc. Similar testimony was given by representatives of other large shippers.

Louis F. Beidleman, a freight claim investigator for the Burlington, said that he had handled claims filed by Thomas & Taggart, but could not remember the exact dates. Thomas S. Howland, of Chicago,

treasurer of the Burlington, testified that payments of claims are made through his office. Under the terms of the subpoena he was required to produce "books and papers and return vouchers." He said that he had called on the auditor's office for these, but that official had no vouchers or records other than the drafts payable to Thomas & Taggart, which were offered in evidence.

At the conclusion of presentation of evidence on the part of the Government, attorney for the defendants filed a demurrer, arguing that no evidence had been produced to show conspiracy, and even if such evidence had been presented, the court lacked jurisdiction, as the alleged crime was committed in New York, and not in Missouri, and asked that the case against Crosby be dismissed. Judge McPherson overruled the motion as to Mr. Crosby, and fixed the date for argument on the demurrer for May 25.

On May 25 the case went to the jury, and Thomas and Taggart were found guilty of conspiring with shippers to obtain rebates. Section 5440 of the Revised Statutes, under which Thomas and Taggart are convicted, provides a fine of not less than \$1,000 nor more than \$10,000, or imprisonment in the penitentiary for not more than two years, or both fine and imprisonment, at the discretion of the court.

George H. Crosby, traffic manager of the Chicago, Burlington & Quincy Railway Company, was discharged by Judge McPherson, the court sustaining the demurrer alleging that no evidence had been presented to connect Crosby with a conspiracy. Sentence in the case of Thomas and Taggart was suspended by the court pending argument upon a motion for a new trial.

Combination Against American Freight

Consul General Wilbur advises that a combination has been effected between the Barber Line, East Asiatic and some of the Standard Oil steamers against American freight. He believes that what is needed throughout the Orient is an American line of steamers under the American flag, running from New York through the Suez Canal, entirely independent of any combination.

Want Import Rates Adjusted

It is understood that many big shippers and manufacturers are demanding that import rates be adjusted or put on a basis that will admit of more successful competition with foreign production. The point made is that the inland proportions of these rates are so much lower than domestic rates for the same distance that the effect of a protective tariff is almost nullified.

Secretaries of commercial and public bodies throughout the United States are invited to report their proceedings to FREIGHT. All subjects of general interest relating to freight rates and transportation questions will be published in detail. Communications of this kind should be addressed to Editor FREIGHT, 116 Nassau street, New York city.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

The Allison Amendment

To the Editor of Freight:

SIR—Please advise me what, in your opinion, would be proper matters for the court to consider under the Allison amendment. B. B. NIMES.

SYRACUSE, N. Y., May 24, 1906.

By the so called Allison amendment, suits to join, set aside, annul or suspend an order or requirement of the Commission are permitted, and jurisdiction to determine such suits is vested in the Circuit Courts of the United States. To reply to the question shortly, it can be said that the Circuit Courts will consider any matter necessary to secure justice in the premises; this is the only safe rule to lay down for a large number of cases. In all cases the court would determine whether or not the statute is constitutional, whether or not the rights of the carrier under the Constitution have been preserved, such as whether or not it has had "due process of law," or whether or not the compensation fixed by the Commission is "just." Any one or all of the following might also with propriety be considered in a case brought before the court: (a) the irregularity of the proceedings before the Commission; (b) misconduct of the complainant below, or his counsel; (c) whether the carrier was taken by surprise in the evidence, the issues framed by the complaint and answer, mistakes of law or fact by the Commission; (d) matters of evidence, such as the refusal of evidence offered or the acceptance of improper evidence; (e) whether the decision of the Commission is contrary to the law, or (f) the decision contrary to the facts, as found by the Commission, or (g) decisions of fact by the Commission are warranted by the evidence, and (h) newly discovered evidence.

We are inclined to think that in a large number of cases the trial before the Circuit Court would bring before it the entire matter, just as if the Commission had not determined the case.

Routing of Shipment Not Followed

To the Editor of Freight:

SIR—On April 11, 1906, the Bristol Brass Company, of Forestville, Conn., shipped us six cases brass goods, weighing 630 pounds, and sent us B/L with 81 cents freight rate (which is correct rate), routed National Despatch, care Pere Marquette, via Kewaunee, Wis.

The shipment did not come via Kewaunee, but was taken to Chicago, and delivered to the C. & N. W. Ry., and the latter company has presented a freight bill for \$6.99 charges.

We tendered the agent of C. & N. W. Ry. Co. the amount as per B/L, and he refused, stating that a recent Interstate Law prohibits taking any less than amount charged, being the local freight from Chicago to this city, added to the through rate on B/L.

Please let us know if the agent's position is correct. If so, what course must we pursue to collect the overcharge? Your prompt reply by letter will greatly oblige,
Yours very truly,

JOANNES BROS. Co.

GREEN BAY, Wis., May 9, 1906.

A case of this nature is not free from difficulties. It appears that the routing of these goods was made by the consignor, but that for some reason the goods were not carried via the route indicated, but by another and more expensive line.

It is true that in the absence of routing the initial carrier has implied authority to select any of the usual routes beyond the terminus of its own line. The final and connecting carriers are entitled to their usual freight for its service in transporting the goods to destination. (Price v. Denver, etc., R. Co., 12 Colo. 402; Patten v. Union Pacific R. Co., 29 Fed.; Missouri, etc., R. Co. v. Stoner, 5 Tex. Civ. App. 50; Schneider v. Evans, 25 Wis. 241; Wolf v. Hough, 22 Kan. 659; Crossan v. N. Y., etc., R. Co., 149 Mass. 196.)

It is the duty of the initial carrier to obey the consignor's directions as to the route which he selects. (Michigan, etc., R. Co. v. Day, 20 Ill. 375; Proctor v. Eastern R. Co., 105 Mass. 512; Davis v. Garrett, 6 Bing. 716; Sleat v. Fagg, 5 Barn. & Ald. 342; Stewart v. Merchants', etc, Co., 47 Iowa 229; Philadelphia, etc., R. Co. v. Beck, 125 Pa. St. 620; Express Co. v. Kountze, 8 Wall. (U. S.) 342; Sager v. Portsmouth, etc., R. Co., 31 Me. 228; Illinois Cent. R. Co. v. Tronstine, 64 Miss. 834; Wright v. Northern, etc., R. Co., 8 Phila. (Pa.) 19; Ponkey v. Richmond, etc., R. Co., 3 Inters. Com. Rep. 806; Pennsylvania R. Co. v. Stern, 119 Pa. St. 24.)

It is also the duty of the initial carrier to transmit the consignor's instructions to the carrier to whom the shipment is delivered. (North v. Merchants' Transp. Co., 146 Mass. 315; Palmer v. Chicago, etc., R. Co., 56 Conn. 137; Little Miami R. Co. v. Washburn, 22 Ohio St. 324; Pankey v. Richmond, etc., R. Co., 3 Inters. Com. Rep. 33.)

The carrier is liable, as an insurer, if the goods are unnecessarily deviated even though the carrier act as forwarder and not as common carrier. (Wilcox v. Parmelee, 3 Sandf. (N. Y.) 610; Johnson v. New York, etc., R. Co., 33 N. Y. 610; Philadelphia, etc., R. Co. v. Becks, 125 Pa. St. 620; Goodrich v. Thompson, 44 N. Y. 324; Isaacson v. New York, etc., R. Co., 94 N. Y. 278; Independence Mills Co. v. Burlington, etc., R. Co., 72 Iowa 535; Louisville, etc., R. Co. v. Odill (Tenn.), 33 S. W. 611; Brown, etc., Co. v. Pennsylvania Co. (Minn.), 65 N. W. 961.)

There are instances, however, where an emergency will justify a change of route contrary to the shipper's

instructions. (*Johnson v. New York, etc., R. Co.*, 33 N. Y. 610; *Regan v. Grand Trunk R. Co.*, 61 N. H. 579.) If, for some reason, which does not amount to an emergency, a connecting carrier can not or will not receive the shipment, it is the duty of the initial carrier to notify the consignor or owner of the goods and await his instructions in regard thereto. (*Goodrich v. Thompson*, 44 N. Y. 324; *Hand v. Baynes*, 4 Whart. (Pa.) 204; *Alabama, etc., R. Co. v. Thomas*, 89 Ala. 294; *Louisville, etc., R. Co. v. Odill* (Tenn.), 33 S. W. 611; *Levy v. Louisville, etc., R. Co.*, 35 La. Ann. 615; *Johnson v. New York, etc., R. Co.*, 33 N. Y. 610.)

In the absence of any reason for the deviation of this shipment, but assuming that the error is due to some oversight of a billing clerk in the employ of one of the carriers, we would advise that the proper amount of freight as per bill of lading, be tendered, and compel the carrier which made delivery to look to the carrier responsible for the misrouting for the difference in charges.

Suitable Cars for Shipment

To the Editor of Freight:

SIR—We would like your opinion on the following: In shipping cedar shingles, very often the shingles are so light that we cannot get the amount of shingles in the car to make minimum weight. We have ordered, for instance, 33-foot cars and they have given us 34-foot cars, and it was stated on the shipping bill by the agent, to wit, that we ordered 33-foot car and they furnished 34-foot car. Can the railroad company make us pay the minimum on a 34-foot car, which is greater than 33 feet, when we have loaded the car to its visible capacity, under the above conditions of the shipping receipt?

The minimum capacity of 33-foot car is 24,000 pounds and of 34-foot car is 30,000 pounds.

Yours truly,

WILBUR LUMBER CO.

MILWAUKEE, Wis., May 16, 1906.

A common carrier is under duty to furnish suitable cars in which to load goods tendered to it for shipment. This rule has generally been interpreted to mean that the appliance furnished must be of such construction that the property will not be injured in transit. If a car be loaded by the shipper, and he knows the same to be unsuited for the purpose, he is generally held liable for any loss or damage which may occur by reason of the defects in the car which he has noticed. He is supposed to inspect the car and ascertain whether or not it is suitable to his purpose; if unsuited, to refuse to load the same. The duty to furnish cars is not an absolute one. The carrier must furnish only such kinds of cars, as many, and at such times as he can be reasonably supposed, under all the facts and circumstances, to supply.

Having in mind the general rule of law, it appears from the case before us that both a 33-foot and a 34-foot car are equally suited to the shipment, as far as physical construction of the cars is concerned. It appears, however, that the minimum weight of the shorter car is a reasonable minimum, while the minimum provided for the longer car is unreasonable.

Under the circumstances of this case there seems to be a contract between the carrier and the shipper for the furnishing on the one hand of a 33-foot car by the carrier, and on the other hand loading in that car 24,000 pounds of shingles. Technically, the carrier does not comply with its part of the contract. If the shipper load a 34-foot car without protest, he would probably be estopped to set up the fact that in the shipment made he could not load 30,000 pounds in such a car. It appears in this case that the shipper practically loaded the car supplied under protest. This permits him to recover from the carrier its charges which are made in excess of the actual loading.

As it appears that the minimum for the 34-foot car is too high, and that it is impossible to load 30,000 pounds of shingles in a car of that length, such regulation is unreasonable, and it is suggested that the carrier be requested to change its minimum on cars of this length.

Carriers and Fraudulent Bills of Lading

To the Editor of Freight:

SIR—On page 242, under "Weak Points of the Present Bill," will you be kind enough to inform us which States do not bind the carrier of fraudulent bills of lading issued by the agent.

Yours very truly,

BARTLETT, FRAZIER & CARRINGTON,

Per John S. O'Brien.

CHICAGO, May 4, 1906.

A fraudulent bill of lading may be of various kinds. It is assumed that the inquirer refers to a bill of lading issued by the agent of a carrier for certain goods when in truth and in fact he had received none of them.

The general rule of law in matter of this kind is that a bill of lading duly issued in the usual course of business by an authorized agent of a carrier, binds it; but such agent has no authority to issue a bill of lading for goods which have not been received. The rule of law where the agent has issued a bill of lading acknowledging the receipt of goods when in fact no goods have been received, differs materially whether the bill of lading be in the hands of the shipper or in the hands of a bona fide holder for value. A shipper who secures a bill of lading from a carrier without making delivery of the goods cannot recover from the transportation agency, because, in so far as the document is a receipt, it is subject to parol evidence to show its inaccuracy, and in the supposed case the shipper himself, being a party to the wrong, cannot take advantage of his own wrong.

The decisions of the courts differ where the bill of lading is in the hands of a bona fide holder for value. In England there are a large number of authorities holding that the carrier is not estopped to show that it actually received no goods. (*Grant v. Norway*, 10 C. B., 665, 70 E. C. L. 665; *Coleman v. Riches*, 16 C. B. 104, 81 E. C. L. 104; *Hubbersty v. Ward*, 8 Exch. 330; *Brown v. Powell Duffryn Steam Coal Co.*, L. R., 10, C. P. 562; *McLean v. Fleming*, L. R., 2

H. L. Sc., 128; Cox v. Bruce, 18 Q. B. Div. 147; Meyer v. Dresser, 16 C. B. N. S. 646, 111 E. C. L. 646; Jessel v. Bath, L. R. 2 Exch. 267; Zipsey v. Hill, 1 F. & F., 570). And notwithstanding the bills of lading act this doctrine has not been changed. (Brown v. Powell Duffryn Steam Coal Co., L. R. 10, C. P. 562, 44 L. J. C. P. 289; Meyer v. Dresser, 16 C. B. N. S. 646, 111 E. C. L. 646, 33 L. J. C. P. 289, 10. L. T. N. S. 612; Jessel v. Bath, L. R. 2 Exch. 267, 36 L. J. Exch. 149). To the same effect are the decisions of the Canadian Courts. (Erb v. Great Western R. Co., 5 Can. Sup. Ct. 179; Oliver v. Great Western R. Co., 28 U. C. C. P. 143).

The English doctrine is a settled doctrine of the United States courts. (Pollard v. Vinton, 105 U. S. 7; St. Louis, etc., R. Co. v. Knight, 122 U. S. 79; Friedlander v. Texas, etc., R. Co., 130 U. S. 416; Robinson v. Memphis, etc., R. Co., 9 Fed. 129; The Loon, 7 Blatchf. (U. S.) 244; Sutton v. Kettell, 1 Sprague (U. S.) 309; Missouri Pac. R. Co. v. McFadden, 154 U. S. 155; The Asphodel, 53 Fed. 835; Crenshaw v. Pearce, 37 Fed. 432). This doctrine prevails in Louisiana, Maryland, Massachusetts, Minnesota, North Carolina and probably in Ohio. (Fellows v. Steamer R. W. Powell, 16 La. Ann. 316; Hunt v. Mississippi Cent. R. Co., 29 La. Ann. 446; Baltimore, etc., R. Co. v. Wilkins, 44 Md. 11; Lazard v. Merchants', etc., Transp. Co., 78 Md. 1; Sears v. Wingate, 3 Allen (Mass.) 103; Hall v. Mayo, 7 Allen (Mass.) 454; National Bank of Commerce v. Chicago, etc., R. Co., 44 Minn. 224; Louisiana Nat. Bank v. Laveille, 52 Mo. 380; Williams v. Wilmington, etc., R. Co. 93 N. Car. 42; Dean v. King, 22 Ohio St. 118). Under an Arkansas act 1887, prohibiting carriers from issuing bills of lading unless goods be actually received and giving the right of action against a carrier to an aggrieved party, it has been held that where a railroad company issued a bill of lading to an owner of cotton in the hands of a compress company, it is estopped as to a third person from denying that the cotton was in its possession or control (Martin v. St. L., etc., R. Co. 55 Ark. 510).

The reasons for the adoption of the English rule that the carrier is not estopped by the statement in the bill of lading were stated by Mitchell, J., in Natl. Bank of Commerce v. Chicago, etc., R. Co., 44 Minn. 224. In that case the court said:

"It is . . . to be admitted that it requires some temerity to attack either the policy or the soundness of a rule which seems to have stood the test of experience, which has been approved by so many eminent courts, and under which the most successful commercial nation in the world has developed and conducted her vast commerce ever since the inception of the carrier's bill of lading. But on questions of commercial law it is eminently desirable that there be uniformity. It is even more important that the rule be uniform and certain than that it be the best one that might be adopted. Moreover, on questions of general

commercial law the Federal courts refuse to follow the decisions of the State courts, and determine the law according to their own views of what it is. It is, therefore, very desirable that on such questions the State courts should conform to the doctrine of the Federal courts. The inconvenience and confusion that would follow from having two conflicting rules on the same question in the same State, one in the Federal courts and another in the State courts, is of itself almost a sufficient reason why we should adopt the doctrine of the Federal courts on this question. To do otherwise, so long as the jurisdiction of those courts so largely depends on the citizenship of suitors, would really result in discrimination against our own citizens."

The doctrine that the carrier is estopped to set up the fact that it did actually receive the goods prevails in Illinois, Kansas, Nebraska, New York and probably in Pennsylvania. (St. Louis, etc., R. Co. v. Larned 103 Ill. 293; Stone v. Wabash, etc., R. Co., 9 Ill. App. 48; Tibbetts v. Rock Island, etc., R. Co., 49 Ill. App. 567; Wichita Sav. Bank v. Atchison, etc., R. Co., 20 Kan. 519; Sioux City, etc., R. Co., v. Fremont First Nat. Bank, 10 Neb. 556; Armour v. Michigan Cent. R. Co., 65 N. Y. 111; Batavia Bank v. New York, etc., R. Co., 106 N. Y. 195; Brook v. N. Y., etc., R. Co. 108 Pa. St. 529).

The reason for the rule that the carrier is not estopped to show that it actually received no goods is found in Armour v. Michigan Cent. R. Co., 65 N. Y. 111. In that case the court said: "The agent, Street, having power to issue bills direct to consignees for goods actually in the possession of the defendant, and the present bills being in no way distinguishable in form from those which were usually employed, he must be considered as having the necessary authority as to the plaintiffs acting in good faith."

Certain States have statutes providing that bills of lading, in the hands of bona fide holders for value, shall under certain circumstances be conclusive evidence of the receipt of the goods. Such statutes are to be found in Maryland (Stat. 1876, c. 262, sec. 2; Pub. Gen. L. Md., art. 14, sec. 2; Lazard v. Merchants', etc., Transp. Co., 78 Md. 1), Mississippi (The Guiding Star, 53 Fed. 936), Alabama (Ala. Code 1886, sec. 1179).

Demurrage Charges

To the Editor of Freight:

SIR—Confirming our telephone request of yesterday, in which we inquired regarding the length of time that it is permissible to leave cars unloaded provided the demurrage of \$1 a day is paid, we would thank you to favor us with advices as to what our rights are in the premises.

Thanking you in advance for your courtesy, we beg to be considered,

Yours truly,
THE BRUNSWICK-BALKE-COLLENDER COMPANY.
NEW YORK, April 14, 1906.

An examination of the car service rules covering Washington, D. C.; New Haven, Conn., and States of

Massachusetts and New Jersey does not disclose any rule providing the length of time cars may be held provided the shipper or consignee is willing to pay demurrage according to the rate provided. It may be said that the practice varies. In some parts of the country freight is sent to the public storehouse very shortly after the expiration of the free time; in others, the time allowed is five days. Certain traffic rules of carriers, notably P. R. R., provide that cars shall not be detained longer than ten days.

Illinois Intrastate Traffic

To the Editor of Freight:

SIR—I find that several of the railroads operating within the State of Illinois refuse to protect rates at intermediate points on intrastate traffic. As I understand it, the Illinois law is very plain on this subject.

Will you kindly advise your understanding of it, and oblige,

Yours very truly,

J. F. STROMBECK.

MOLINE, Ill., April 5, 1906.

If by this inquiry it is meant that the carriers in Illinois charge more for the short than the long haul, complaint should be made to the Railroad & Warehouse Commission of Illinois, William Kilpatrick, secretary, Springfield. The commission is charged with formulating a schedule of rates, but the means of enforcement are meagre. The practice of the carriers may be in violation of the schedule provided, or the schedule itself may be contrary to justice and equity.

Responsibility for a Shortage

To the Editor of Freight:

SIR—We would like to have your views on the following: A carload of reels of insulated wire having been consigned to customer's private siding, and having the railroad agent's receipt for the full number of reels contained in that car, and railroad showing delivery to us of this car on consignee's siding with seals intact, and then this customer making a claim for one reel short. Who, in your opinion, is responsible for this shortage? A reply in your next month's issue would be appreciated.

Yours very truly,

ALFRED F. MOORE.

PHILADELPHIA, Pa., April 17, 1906.

Mr. Alfred F. Moore, Nos. 200 to 218 North Third Street, Philadelphia, Pa.:

DEAR SIR—Referring to your inquiry of April 17, our legal department would like further information on the following points:

Were the reels sold f. o. b. shipping point or point of delivery?

Did the vendor or the vendee select the route of shipment?

Did the railroad agent actually count the number of reels in the car?

Did the carrier check the car out?

Were the seals at destination the original seals?

Very truly yours,

FREIGHT PUBLISHING COMPANY.

NEW YORK, April 20, 1906.

To the Editor of Freight:

SIR—We have your letter of the 20th inst. in reply to ours of the 17th relative to a shipment of a carload

of wire. We beg to reply to the five questions in order as follows:

1. The reels were sold f. o. b. point of delivery.

2. The routing of all previous shipments was an agreement between both parties.

3. The actual count of reels was made by the receiving clerk at the railroad station.

4. The car was checked out by the records of loads delivered between our teamster and the receiving clerk at the railroad station.

5. The railroad company advised us that their seals were intact when car arrived at destination, which of course must have been the original seals, as the car was shipped direct to point of delivery.

Thanking you for your prompt reply to our letter, we anxiously await report on same in your next publication.

Yours very truly,

ALFRED F. MOORE.

PHILADELPHIA, April 23, 1906.

This case is not free from difficulty, owing to the conflict of evidence. The following should be borne in mind: The bill of lading issued by the initial road is in part a receipt, and in so far as it is a receipt, which includes the number of reels, it is open to the usual rule of evidence that a receipt is subject to parol testimony to change its terms. So, also, it should be remembered that the receipt which the consignee gave to the carrier is open to the same extraneous evidence. Thus the question is to be decided upon the weight of the evidence.

From the facts submitted it appears that at least two parties counted the reels as they were placed in the car. Perhaps there were more than two. It further appears that at destination the reels were counted by only one person. It is manifest that one of these classes has miscounted the number of reels. There can be no doubt that the shipper can prove the delivery of the total number of reels to the carrier. The consignee received the total number less one. The burden of proof of showing delivery to the carrier is upon the shipper. The burden of proof of showing delivery to the consignee is upon the carrier.

While we are disinclined to comment upon the weight of the evidence it seems in this case that the loss cannot fall upon the consignor. If the consignor sue the consignee for the one reel and prove delivery to the carrier the proof of that fact proves prima facie delivery to the consignee, for delivery to a common carrier is delivery to a consignee. Upon the whole, we think the question is one between the carrier and the consignee, but it should be remembered that the case will turn not so much on the law, which is clear, but upon the facts, which are matters for the determination of a jury.

Self-Explanatory Correspondence

To the Editor of Freight:

SIR—Last April I shipped, via steamer Rees Lee, one of our local river packets, a chair consigned to our customer at New Albany, Ind. This chair was never received by consignee.

I filed a claim against the steamer, which was returned some time ago with request that I file same

with the wharf master at New Albany, as they had delivered the chair to him and hold his clear receipt for same, and that that delivery ended their responsibility.

I sent all the papers in this matter to our customer and asked him to take up the matter with the wharf master, but he can't make any progress with the collection.

I wish to enter suit (want to collect without entering suit against my customer; I understand that he is responsible to me for the payment of the chair) to compel either the steamer Rees Lee or the wharf master to settle this matter. Who, in your opinion, would be the proper party to enter suit against? Opinion of our attorneys differs on this subject.

Thanking you in advance for the favor, I am,

Yours truly, ANTHONY LUCIK.

CINCINNATI, Ohio, March 13, 1906.

NEW YORK, March 20, 1906.

Mr. Anthony Lucik, 141 Vine Street, Cincinnati, Ohio:

DEAR SIR—Replying to your letter of March 13 concerning the loss of a chair consigned to New Albany, Ind., the matter was referred to our Legal Department, which requests the following additional information:

Please advise the relationship which exists, so far as is known, between the wharf master and the steamer; also advise whether or not the wharf is a public or private wharf, and only used by steamer Rees Lee or by other steamers as well. Kindly ask Mr. Lucik to forward copy of B/L under which the shipment was made.

Very truly yours,
FREIGHT PUBLISHING COMPANY.

NEW YORK, May 7, 1906.

Mr. Anthony Lucik, 41 Vine Street, Cincinnati, Ohio:

DEAR SIR—We wrote you in March for additional information concerning a claim against the steamer Rees Lee. It is necessary for us to have this information in order to give you an intelligent answer to your inquiry of March 13. If you will be good enough to forward it we will give the matter prompt attention.

Very truly yours,

FREIGHT PUBLISHING COMPANY.

To the Editor of Freight:

SIR—Answering your letter of the 7th inst. in reference to my claim against the steamer Rees Lee, will say that I sent your letter to my customer at New Albany, Ind., and asked for the information. This, for some reason unknown to me, he has refused to give. I threatened to enter suit against him for the amount of my bill, and he sent check in full by return of mail. As he has acted so bullheaded in the matter, he might as well have the trouble in collecting his claim all to himself.

I thank you for your kindness in this matter.

I am yours truly,

ANTHONY LUCIK,
Per John J. Lucik.

Loading of Mixed Cars

To the Editor of Freight:

SIR—The C., M. & St. P. R. R. Co. have been in the habit for years of allowing soft and hard coal to be shipped in the same car, and the minimum rate to apply, that is, when the rates on both kinds of coal were the same; now they have established a ruling that if two kinds of coal are shipped in the same car, that two minimums must apply. For example, if the minimum on a car is 30,000 pounds, and we load

15,000 pounds soft coal and 15,000 pounds hard coal, making a total of 30,000 pounds, the railroad company will charge us on 60,000 pounds.

The railroad company, we understand, claims that all the billing that was done on this class of shipments was done by the bill clerks by mistake, and that they have now stopped this way of billing.

In their tariffs they head the rates "Hard and Soft Coal," and they have the rate on hard coal in one column and the rate on soft coal in another, side by side.

When it is convenient for you, we would like to have your opinion on this matter.

Yours truly,

WILBUR LUMBER CO.

MILWAUKEE, Wis., May 18, 1906.

The rule regarding the loading of mixed cars in Western Classification Territory is to be found at page 4 of the Rules, Western Classification No. 40, effective April 1, 1906. Rule 2L: "Unless otherwise specified in the classification, where two or more articles are mentioned in one item or bracketed items, they may be forwarded in straight or mixed carloads at the rate provided, except that the mixed C. L. rating shall not apply on articles which are provided for elsewhere in the classification at a higher rate or minimum weight. In such cases the amount of the higher class articles which may be included shall not exceed 33 1-3 per cent. of the minimum weight provided for the mixed carload." The exception is a recent addition to the classification.

The present coal tariff of the C., M. & St. P. R. R. Co. is supplement 11 G. F. D., No. 48760, issued March 27, 1906, effective April 7, 1906. This supplement contained the following correction: Refer to tariff and correct the minimum weight on hard and soft coal to read '40,000 pounds, except when the marked capacity of the car is less, in which case the marked capacity of the car will govern.'"

Hard and soft coal are not bracketed or included in one item in the classification, and we find no authority for charging freight on 60,000 pounds when that quantity is not loaded in the car. If the shipment is an interstate one, the marked capacity of the car is 30,000 pounds, and if the car be not loaded above that amount the carrier cannot charge for more than transporting the quantity named. As rates on hard coal are in general more than the rates on soft coal, the carrier would be entitled to charge the hard coal rate per ton on the entire shipment, irrespective of the fact whether or not soft coal be loaded in the car.

Bill of Lading Conferences

To the Editor of Freight:

SIR—If at your leisure you will favor us with some information regarding the outcome of the conference between the bankers and the railroads regarding the term "not negotiable" on uniform bills of lading, since the last item published in FREIGHT, we would appreciate the same very much. We are particularly interested because of the large number of "to order" shipments that we make.

Thanking you in advance for your courtesy, we beg to be considered,
 Yours truly,
 THE BRUNSWICK-BALKE-COLLENDER CO.,
 TAROF, Traffic Manager.
 NEW YORK, May 21, 1906.

We have no information concerning the conference between the bankers and the railroads regarding the term "not negotiable" on uniform bills of lading. It has been said that when the shippers and carriers shall have agreed upon a bill of lading, the carriers will then have a conference with the bankers. Apparently the bankers' bill (H. R. 15846) is not to be pressed at this session.

It is recommended to inquirers that they strike from bills of lading used by them the words "not negotiable," provided the shipments are made "to order," and having same noted by the agent of the carrier in accordance with the current classification.

When a Bank Acquires Title

To the Editor of Freight:

SIR—With reference to article on page 256 of your May issue entitled "A Bill of Lading Entangled," you state that if the drafts were discontinued there would result a different law than if the papers were for collection only.

Kindly state the law covering above cases, or give reference to same, and oblige,

Yours truly, GEORGE M. MARNIE.
 MINNEAPOLIS, Minn., May 8, 1906.

A bill of lading is a muniment of title, and merchandise covered by it is often sold or pledged by the transfer of the bill. If a bill of lading be attached to a draft and the draft be forwarded by a banking institution for collection, the bank and its correspondents are simply agents for the purpose of securing the acceptance (if any) and collection of the funds demanded by the draft. The bank acquires no title to the property covered by the bill of lading. If, however, it makes advances or discounts the draft, it acquires title to the goods. In the case of *Marine Bank v. Wright*, 48 N. Y. 1, the court said: "Where the consignor of property, upon its shipment and before delivery, draws a bill of exchange upon the consignee and procures the same to be discounted at a bank upon the security of a bill of lading which is transferred and delivered with it, the bank acquires title to the property described in the bill of lading, conditional upon the acceptance of the draft; upon such acceptance the title passes to the acceptor; but upon refusal to accept, the title continues unimpaired, and upon the receipt by the consignee of the property and its conversion, he is liable to the bank for the money advanced upon it." To the same effect and supporting this doctrine are the following cases: *Michigan Cent. Ry. Co. v. Phillips*, 60 Ill. 90; *Illinois Cent. Ry. Co. v. Southern Bank, etc.*, 41 Ill. App. 287; *Chicago Fifth Nat. Bank v. Bayley*, 115 Mass. 228; *Hathaway v. Haynes*, 124 Mass. 311; *Commercial Bank v. Pfeiffer*, 108 N. Y. 242; *Peters v. Elliott*, 78 Ill. 321.

AMERICAN SHIPPERS' ASSOCIATION

The American Shippers' Association was organized on a permanent basis in Chicago Friday, May 4. The previous organization was for the purpose of obtaining a uniform bill of lading, but the plan is to enlarge the scope of the association and to pay particular attention to freight rates. Officers were elected as follows:

President—W. B. Conkey, Chicago.

First Vice President—Charles H. Deere, Moline, Ill.

Second Vice President—L. A. Clark, Muncie, Ind.

Treasurer—W. L. Bush, Chicago.

General Counsel—Levy Mayer, Chicago.

Secretary—J. M. Glenn, Chicago.

By-laws were adopted and there was an informal discussion over the subjects to be treated in a circular to be sent to the general public. Reduction of rates, classification, demurrage and the arrogance of some of the classification committees were among the matters considered.

An application for a charter has been made in the State of Illinois.

GERMAN RAILROAD PENALTIES

American shippers of goods destined for transportation over the railroads of Germany will save themselves pecuniary expenditure, much annoyance and possibly loss of future business by exercising great care in the preparation of the shipping documents covering the goods, stating with exactitude the net and gross weights in kilos, and if the contents are inflammable or otherwise dangerous in character. The exact nature of the same should be stenciled on the case or package, as well as stated in the freight bill.

The fines imposed for infringement of the regulations governing freight traffic upon the German roads, as embodied in the freight tariff of April 1, 1906, will be found of interest. The shipper is responsible for the correctness and completeness of the statements contained in the freight bill, and incurs all the consequences arising from inexact or insufficient declaration.

If, at the shipper's request, the freight bills are filled out by railroad employes, the responsibility of the shipper for any errors that may occur is in no wise lessened. If, in carload shipments, the weight quoted in the freight bill shows no larger deviation than 2 per cent. from the weight ascertained from the railway scales, the former is considered correct. In case of an incorrect declaration of the contents of a shipment, or of too low a declaration of the weight of a carload of the overloading of a car beyond its prescribed capacity by the shipper or his agent, in addition to the payment of the possible freight difference and compensation for the damage produced, fines may be imposed and made payable to the companies concerned in the transportation of the goods, the amounts of which vary from \$2.85 per kilo (2.20 pounds) to various minor penalties.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Fraudulently Altered Bills of Lading

The Court of Appeals of Maryland has rendered its decision in the case of *Merchants Nat. Bank v. C. & R. Steamboat Co. of Baltimore City*. Suit was brought by the bank for the wrongful conversion of certain bales of cotton and for damages against the defendant for failure to perform its contract as set forth in the bill of lading. The facts were as follows: Prior to October 1, 1899, the carrier issued thirty-four order bills of lading, each drawn to the order of the shipper notify Messersmith & Co.; the bills of lading were in the usual form and subject to all conditions appearing thereon. The cotton covered by the bills of lading was promptly delivered to notify parties without requiring the surrender of the bill of lading, as is required by clause nine. After delivery, it appeared that the notify party altered the dates of the bills and thus secured loans and advances thereon. The bills of lading have printed on the face "not negotiable." In disposing of the case the court said:

"By the common law a bill of lading was not, in an unrestricted sense, a negotiable instrument like a promissory note, but was, as this court has repeatedly stated, quasi negotiable only. But even that restricted common law negotiability may be limited and still further qualified by the insertion of appropriate terms wholly destroying all negotiability, and it seems to be generally agreed that such a result may be accomplished by simply stamping or printing across the face of the instrument the words 'not negotiable,' as was done in this instance. *Bank of Bristol v. B. & O. R. Co.*, 99 Md. 675, 59 Atl. 134; *Tiedeman v. Knox*, 53 Md. 615, 616. The former case further decides that a bill of lading is of consequence 'only in so far as it is the evidence of a title to something in somebody.' Its transfer is the transfer of the title to the thing described in it, and whatever equities exist between the parties to it with respect to the title of the parties which it purports to represent will follow that property into the hands of the assignee of the bill of lading, unless some other legal or equitable principle intervenes to preclude the assertion of a prior right as against a bona fide assignee for value. In Maryland bills of lading are now made negotiable instruments and securities, 'unless it be provided in express terms to the contrary on the face thereof,' etc. Article 14, § 1, Code Pub. Gen. Laws. It seems to be clear, therefore, that the bills of lading in this case, having the words 'not negotiable' printed across the face of them, are non-negotiable instruments or securities, and as such passed to the appellant, subject to such equities as existed between the parties to them at the time of the assignment, unless there is some legal or equitable principle which intervenes to preclude the assertion of

the prior right as against a bona fide assignee for value, or unless there are appropriate terms in the bills themselves that limit or destroy such features. It is said, however, that these bills of lading cannot be wholly non-negotiable, because of those clauses which provide for the effect of the word 'order,' and also of those which impose upon the carrier certain duties after the arrival of the property at its destination, or of those clauses referred to at argument as the order clause, the assignee clause and the alteration clause.

"But it is also alleged that after the delivery of the goods to Messersmith & Co., the then holders and owners of the bills, before they passed into the hands of the appellant, they were fraudulently altered by Messersmith changing the dates thereof. It was said in *Wood v. Steele*, 6 Wall., 80, 18 L. Ed. 725: 'It is now settled, in both English and American jurisprudence, that a material alteration in any commercial paper, without the consent of the party sought to be charged, extinguishes his liability. The materiality of the alteration is to be decided by the court. . . . The grounds of the discharge in such cases are obvious. The agreement is no longer the one into which the defendant entered. Its identity is changed. Another is substituted without his consent, and by a party who had no authority to consent for him. If the instrument be under seal, he may well plead that it is not his deed, and if it be not under seal, that he did not so promise. In either case the issue must be found for him. To prevent and punish such tampering the law does not permit the plaintiff to fall back upon the contract as it was originally. In pursuance of a stern, but wise, policy, it annuls the instrument as to the party sought to be wronged.' *Burrows v. Klunk*, 70 Md. 460; *Lehman v. Central R. R. Banking Co.* (C. C.), 12 Fed. 596; *Getty v. Shearer*, 20 Pa. 12; *Bigelow v. Stilphen*, 35 Vt. 521.

"But it is contended that this well established doctrine has no application in this case, because, among other things, the eighth condition of the bill provides that 'any alteration, addition, or erasure in the bill of lading, which shall be made without the special notation hereon of the agent of the carrier issuing the bill, shall be void.' But we cannot agree to this. The clause seems to be designed to avoid unauthorized alterations, but it can have no reference to fraudulent alterations made after it has been issued by the carrier. It is more reasonable to construe it as having reference, as was said by the learned judge below, only to such 'alterations' as may be 'properly susceptible of special notation by the carrier's agent.' It would be most unreasonable to hold that the intent of the condition was to do away with the well settled law that a material alteration, fraudulently made by the

holder, vitiates the instrument, and so leave it unprotected from the devices of the unscrupulous. *Burrows v. Klunk*, supra; *Wood v. Steele*, supra. It was perfectly allowable for the parties to make any contract they chose to agree to, and to limit or modify their respective rights with respect to the place or mode of delivery and in many other particulars; but, in order that there should be no misunderstanding, this provision was made in this clause, that no alteration, addition and erasures in the bill should be valid, if made without the notation of the agent of the carrier issuing the bill."

Thus it would appear that where one pledges a forged bill of lading to a bank, making no representation as to the validity thereof, the bank cannot recover from the carrier the amount of money which it has advanced on the document.

An Elkins Law Decision

The United States Circuit Court for the Eastern District of Wisconsin, in disposing of demurrers, has interpreted the Elkins Law of 1903. The case was one brought by the United States against the Milwaukee Refrigerator Transit Company and others, in which it was alleged that rebates were paid back to the shipper through the Refrigerator Company by means of a payment as a soliciting agent of a commission on the published tariff. It was claimed that the commissions were made and accepted as compensation for the services of the Refrigerator Company in soliciting and procuring freight. The effect of the allegations was "to charge the creation by a shipper of the dummy corporation as a device to cover rebates on large shipments of beer in interstate and foreign traffic." In disposing of the case the Court said:

If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. This much may be expressed without approving the theory that the legal entity is a fiction, or a mere mental creation; or that the idea of invisibility or intangibility is a sophism. A corporation, as expressive of legal rights and powers, is no more fictitious or intangible than a man's right to his own home or his own liberty.

Applying the rule here laid down to the circumstances shown to surround the brewing company and transit company, can it be doubted that there really is, in substance and effect, an identity of interest, or that the brewing company, considered as an association of individuals, really owns and fully controls the transit company? Or that the payment of the eighth or tenth of the rate is in reality, and in some form, a payment to or for the benefit of, the shipper? I think sufficient is alleged to show this. Moreover, it clearly appears that the shipper practically controls the transit company, and I think this shows a sufficient identity of interest among the shareholders of both in these repayments to make them rebates, if paid and received with unlawful intent. It is said that the procurement of the

shipments through the contract is the mere soliciting of them for the carriers, for which they are lawfully authorized to pay a part of the rate, in order to get the business; and the transit company, owning a large number of refrigerator cars, and wishing to keep them employed, simply gives the freight to those competing shippers who will make the best terms, the business being of great volume, and the sums paid for freights large. But this theory of innocence is exploded by the fact, as alleged (whatever the actual proof may show), that the transit company is a mere separate name for the brewing company, being in fact the same collection of persons and interests. Assuming the truth of the averments, the device adopted is "neither new, nor deserving of new success." As the patent lawyers say of an aggregation, there is no new mode of operation, new use, or new result—simply the use of old things in a different situation.

There is no doubt some tendency in these days to accept general and vague charges of wrongdoing on the part of corporations at a premium. Much has happened to arouse public feeling on this sensitive subject. For many years transportation development was encouraged in every possible way. The municipal aid craze was an early form of such stimulation. Praise for those who were seeking command of the trade of the world was unstinted and without dissent, and criticism forgotten. But now that we are beginning to feel the tyranny of arbitrary and overwhelming industrial and commercial power, the tendency is to go to the other extreme, and it becomes easy to excite prejudice leading to injustice. The courts will no doubt be somewhat influenced by such tendency; but so far as possible it is for them to keep fundamental rules steadily in view, and with discrimination and careful reflection see to it that injustice is prevented. Joseph Cooke once facetiously said that he had never traveled in Pennsylvania, but had often visited the domains of the Pennsylvania Railroad Company. These and other like domains are now subject to widespread attack; but it will not be forgotten that they are our domains, and, if they are being despoiled, the spoliation is the work of our trustees, who must indeed be brought to book, but the trust property at the same time preserved. (*U. S. v. Milwaukee R. T. Co. et al.*, 142 Fed. 247.)

Storage Charges on Parcels

It has been decided in New Jersey that the Pennsylvania Railroad cannot enforce a payment for storage charges at the rate of 5 cents per day on parcels carried under its package express system if they are not removed by the owners from the depot within twenty-four hours after reaching destination. The plaintiff was Goldy Montgomery, Pemberton, N. J. The suit grew out of a charge of 10 cents for storage made by the Pennsylvania Railroad, which it claimed had accrued on a suit of clothes shipped to the plaintiff two days before. The trial court decided that the carrier had a right to make and enforce such a charge, but the Appellate Court sustained the contention of Mr. Montgomery.

Bill of Lading Suit

An interesting suit has been brought in Baltimore, wherein it was alleged that a grain firm converted to its own use 1,000 bushels of oats. The shipment was

from an Ohio point over the B. & O. R. R. It appears that the bill of lading was an order bill, and was sent by the bank at point of origin direct to the consignees; that the consignees sent proceeds to the bank. Suit was brought by the shipper, who claims never to have received the proceeds for the oats, and alleges that the goods were delivered under a fraudulent bill of lading.

IMPORTANT DECISIONS IN BRIEF

The Kansas City Court of Appeals has held that a carrier can not contract against liability for its own negligence. The shipment was one of live stock, and it appeared that copies of interstate rates had, at one time, been posted in the station in accordance with the law, but for some reason had been torn down. The court held that this was not a compliance with the statute, and therefore the shipper had no election of rates between limited and unlimited liability, and the stipulation in the bill of lading limiting the carrier's liability was void. (*Griffin v. Wabash R. Co.*, 91 S. W. 1015.)

The doctrine that a carrier becomes only liable for goods in his possession as warehouseman if, after holding same at destination a reasonable length of time they have not been called for by the owner, has been affirmed by the Kansas City Court of Appeals. (*Rossier v. Wabash R. Co.*, 91 S. W. 1019.)

Where a shipment of a carload of merchandise was made by a grain company in Texas to a consignee in Georgia, "care N. C. & St. L. R. R., Memphis, Tenn.," and the carrier at place named made delivery of the merchandise without production of the bill of lading, it was held that the bank to whom the bill of lading had been assigned for valuable consideration could recover the value of the goods. In deciding the case the court said: "A bill of lading represents the property and is assignable, and an assignment thereof for a valuable consideration places the title of the property in the assignee. A carrier has the right to require the production of the bill of lading before he delivers the goods. (*Dwyer v. Gulf, C. & S. F. Ry. Co.*, 69 Tex. 707, 7 S. W. 504.) Having this right, and in view of the law that an assignment of the bill of lading for a consideration carries title to the property, it is but just and right that the carrier should require the production of the bill of lading before delivering the goods, and if a delivery be made to the wrong party, without such production by the proper holder, the carrier ought to be held liable to the bona fide holder of the bill. As to the necessity of the delivering carrier having notice of the right of one other than the consignee to receive the goods to make it liable, the appellant relies, among others, upon the authority of *Neb. Meal Mills v. Railway Co.* (Ark.) 41 S. W. 810. This case was decided by a divided court. Besides, it only holds that the shipper cannot complain when delivery is made in exact accordance with the contract, and the rights of third parties are not involved. Here the rights of a third party are involved, which makes a different case. The view of this case, as above expressed, settles the contention against appellant that if it is liable it was misled by the waybill of the initial carrier, and if judgment is rendered against it judgment should be rendered over against said initial carrier in its favor. It being the duty of appellant (the railroad) to demand the production of the bill of lading before delivering the goods, and having failed to take this precaution, constitutes such laches on its part as precludes a recovery against the said initial carrier." (*N. C. & St. L. Ry. Co. v. Grayson Co. Nat. Bank*, 91 S. W. 1106.)

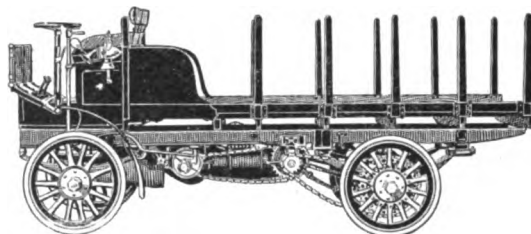
Where one shipped a carload of merchandise to his own order, with instructions to notify a third person and allow inspection, and the goods were placed on a switch track near the notify party's warehouse, he removing part of same and

then returning them to the car without the knowledge of the carrier's agent, it was held that the facts did not show a conversion of the property by the carrier. (*Conrad Shopp Fruit Co. v. Mo. Pac. R. R.*, 91 S. W. 402.)

Where a statute provides for the manner in which a carrier shall order cars the language of the statute must be strictly followed, otherwise the order is not a valid one. Thus where a statute provides that the application for cars "shall state the number of cars desired, the place at which they are desired, and the time they are desired," provided, that the place designated shall be at some station or switch on the railroad, and in ordering one state the time to be "as soon as possible," it was held that such designation specifies no time whatever, and the shipper cannot recover for failure of the carrier to place cars. (*T. & P. Ry. Co. v. Hughes*, 91 S. W. 567.)

KNOX WATERLESS HEAVY GASOLINE CAR

The work of the Knox Automobile Company in the line of commercial cars is well known, as they were the first to enter the field with a successful gasoline commercial car, and their large business in pleasure cars has been supplemented during the past two years by a large and constantly increasing business in commercial cars. During the past year they have put on the market a variety of styles for a variety of purposes, ranging from a load capacity of 700 pounds for light delivery work to 2,500 pound trucks of the style that recently gave such a wonderful demonstration of speed and non-stopping endurance in the carrying of the baggage of the Glidden tourists. In every day's run of that tour, the Knox truck started on touring car time and reached the designated stopping place within the limit of the time allowed for touring cars, thus enhancing their well established reputation for reliability.



KNOX WATERLESS 3-TON TRUCK.

The Knox Company has received many inquiries for cars to carry somewhat larger and heavier loads than what they have produced heretofore, and more than a year ago commenced to design such a car. It was felt, however, that they were constantly securing practical experience and they have, therefore, delayed the actual construction of this heavy car until the many desirable features that can only be determined by large experience might be embodied.

Starting with commercial cars only a little different from touring cars, the company found that the problem of making a commercial car that would stand up under the constant service over all sorts of roads on solid tires and often subject to abuse through ignorant handling, overloading, etc., was a very different one from the touring car problem, and all their commercial cars have of late differed largely in nearly every detail from their passenger cars.

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

A satisfactory conference was held in Mobile recently between Mobile shippers and L. & N. officials relative to an increase of shipping facilities, warehouse room, etc.

A freight bureau department will be added to the Commercial & Industrial Association of Selma.

Work is progressing rapidly on the extension to the Alabama Great Southern Depot at Bessemer.

A vigorous campaign for railroad rate reform is prosecuted by the Farmers, Mechanics & Laborers' Association of Alabama. S. J. Stockhard is in charge of the publicity end of the campaign, with headquarters in the Thomas Building, Birmingham.

ARKANSAS

A movement is on foot to combine the Texarkana Freight Bureau and the Texarkana Board of Trade. Committees from each organization have been appointed for this purpose.

A cooling plant for the purpose of treating cars after the cars are loaded with perishable fruit is to be installed in Van Buren.

CALIFORNIA

Considerable embarrassment resulted from the burning of the general records of the Southern Pacific Company in the San Francisco fire.

Santa Fé has awarded the contract for a freight depot at Los Angeles, to cost \$250,000.

The shipments of goods that were ordered from the East before the earthquake and fire by the wholesalers of San Francisco have been reaching California in great quantity, and the result is a great congestion of freight all along the line.

COLORADO

The American Asphalt Association of Missouri has brought a charge of discrimination in freight rates against the Uintah Railroad Company in the Federal Court. The defendant railroad company runs between Dragon, Utah and Mack, Col.

Lower freight rates on carload lots of commodities have been made to the Black Hills by the Burlington. The rate for 100 pounds on fifth class shipments, which is carload lot stuff, has been cut from 95 to 85 per cent. This, it is stated, is only the first of a series of cuts that will be made, and other roads are likely to follow suit. Retail merchants in the Black Hills will be the chief beneficiaries.

CONNECTICUT

The trouble between the freight forces and the New York, New Haven & Hartford has caused a congestion of freight in New Haven.

The vast increase in the freight moved between New York and the New England States has made it necessary for the New Haven road to add to its fleet for freight carrying exclusively. Between New Haven and New York the steamer Naugatuck, formerly the William G. Payne, is making trips daily.

Close attention given to the handling of foreign freight cars is said to be one explanation of the big increase in the

New Haven's net earnings. The per diem system of charges on foreign cars costs the road 20 cents a day for a stated period, and greater detention \$1 a day for every day they are held.

Some time ago the company planned to give especial attention to foreign cars, which during March, 1905, cost the road more than \$500,000 in excess of the amount it received from Western roads in payment of demurrage in its cars. During March of 1905 the average number of cars on the New Haven on which it was paying the demurrage charge was 28,000 daily, but during the same period of the present year it is stated on good authority that the number of cars had been reduced to 17,000, which resulted in a substantial saving to the company.

In addition to paying the charges on these foreign cars it is pointed out that the presence of so many of them on the lines of the New Haven impeded its own freight business. It is estimated that in this item alone there will be a saving to the company of not less than \$500,000.

DELAWARE

A report is current that the Wabash is trying to get into Wilmington.

The American Car & Foundry Company has all the work it can handle and is now finishing a contract for cars for Japan. The Hollingsworth Corporation plant also is being worked to its full capacity.

FLORIDA

Jacksonville now has a channel of 20 feet of water from the city to the sea, with a depth of 25 feet or more over the bar. While there is a tendency on the part of some people to wait until 24 feet of water is secured before taking steps to increase the business of the port, there are others who are going ahead and making known to the world that there is now 20 feet of water from the city docks to the sea.

GEORGIA

The Georgia Peach Growers' Association met in Atlanta and decided to appeal to the Interstate Commerce Commission for relief from what is regarded as excessive freight and refrigerating rates on the shipment of Georgia peaches.

Savannah Chamber of Commerce has established a freight claim department for the collecting and tracing of claims.

Inman & Co., the well known cotton company, have filed suit in the Superior Court of Muscogee County against the Central of Georgia Railway Company for \$230,000 for the loss of 3,113 bales of cotton in the fire at the Atlantic compress in this city, November last.

The petitioners aver that the cotton was ignited from sparks of an engine of the defendant company and was due to the negligence of the defendant.

ILLINOIS

The demands of the freight handlers for an advance in wages to be presented on June 1 will likely be followed by a demonstration, possibly an ultimatum, but no strike is expected. Freight handlers' wages will not be advanced,

though there will be a gradual adjustment for clerks in freight houses, and possibly some others which in the aggregate will involve an advance. It is not generally known that the railroad clerks have a strong organization and that it is affiliated with the freight handlers' union.

As a result of the protest of the Peoria Shippers' Association against the recent raise in freight rates between Peoria and Pekin, the new local freight schedule, as announced by the Terminal and P. & P. U. railways, was postponed until June 1.

IOWA

The Milwaukee road will make extensive improvement in Sioux City this year, including new pole chutes, the 300 foot extension to the freight house, the new building for the car shops and a complete rearrangement of tracks.

KANSAS

W. D. and R. E. Cox, of Iola, have filed suit for damages against the Katy Railroad for \$2,377.01, damages alleged to be due for failure to provide cars for shipping corn to Kansas City.

The firm says it arranged to sell corn to a commission firm and notified the road thirty-six days ahead of time to provide cars. The road failed to comply, as required by State law.

The Topeka Railway Company is preparing to make a fight against the proposed ordinance making it a misdemeanor to haul freight over the street railway tracks except within the hours specified in the company's franchise.

LOUISIANA

The report is revived that the 'Frisco has purchased the Mobile, Jackson & Kansas City.

Shreveport Traffic Association will ask the State Legislature to pass a bill providing that in cases of loss or damage in the shipment of goods by railroad the road issuing the bill of lading be held responsible.

The largest cargo of oats ever cleared at New Orleans left early in May on the steamer Ruppera, bound for two French ports, Dunkirk and Havre. It consisted of 407,613 bushels.

The Mississippi Valley Import and Export Association has been formally organized and Henry S. Herring, secretary of the New Orleans Board of Trade, has been elected treasurer.

MAINE

Fred E. Titcomb, a barber, from Kennebunk, created quite a sensation in the Eastern division freight yard of the Boston & Maine Railroad in Dover recently when he attempted to steal a locomotive and three passenger cars which were standing on a side track. The train hands were off the train in the yard when Titcomb mounted the cab of the engine and pulled open the throttle valve and the train moved down the track toward the main line of the Portsmouth & Dover track. The switch that connected the side track with the main line quite fortunately was not set right for the train to leave the side track, and two trucks of the locomotive left the iron. Another fortunate thing was that there was but a small head of steam

on at the time that Titcomb took charge of the train and attempted to run off with it. As soon as the train hands discovered what Titcomb was doing they went after him, while the conductor went to the depot and notified Officer Young of the doings of the man. Titcomb, as soon as the engine left the irons, took off his coat and began to shovel coal into the firebox to beat the band. The engineer and fireman took charge of Titcomb and held him until Officer Young appeared and marched him off to the police station. Titcomb, after being arrested, acted as if he had been on a protracted spree, and at the police station he was booked "drunk." It was a fortunate thing that the switch was not open or he would have run the train out on to the Portsmouth & Dover track and, perhaps, have collided with the 10:10 train, which was nearly due at Dover from Portsmouth at the time that he took charge of the locomotive.

It is reported that a freight and passenger steamship line from Portland to Bermuda and the British West Indies will soon be established.

MARYLAND

The delivery of the 250 locomotives and 10,000 freight cars ordered by the Baltimore & Ohio Railroad during May of last year has just been completed, and they are now in service with the other equipment.

The Baltimore & Ohio Railroad has awarded the contract for the enlargement of its terminal facilities at Brunswick, Md., to F. H. Clement & Co., of Philadelphia, Pa. The new yard for the handling of eastbound freight will be west of the present yard and will extend from Brunswick to Knoxville, on property lying between the main tracks of the road and the Chesapeake & Ohio Canal. Work on this extensive improvement will begin at once, and when completed will about double the facilities for handling business, giving yard track capacity for about 7,500 cars. The cost will probably be between \$700,000 and \$750,000.

MASSACHUSETTS

The Boston & Maine has granted its Boston freight handlers an increase to \$2 a day.

The Boston & Maine at the request of the Lynn Board of Trade will enlarge its Commercial street freight yard.

The Boston & Albany are to lay two additional tracks to accommodate the increase in freight at West Springfield.

The New Haven road has acquired 5½ acres of land at Leominster for the purpose of enlarging its freight yards and freight facilities.

MICHIGAN

Navigation on the Grand has been officially opened and the boats Grand and Rapids are plying between Grand Rapids and Lamont, Eastmondville, Bass River and Spoonville.

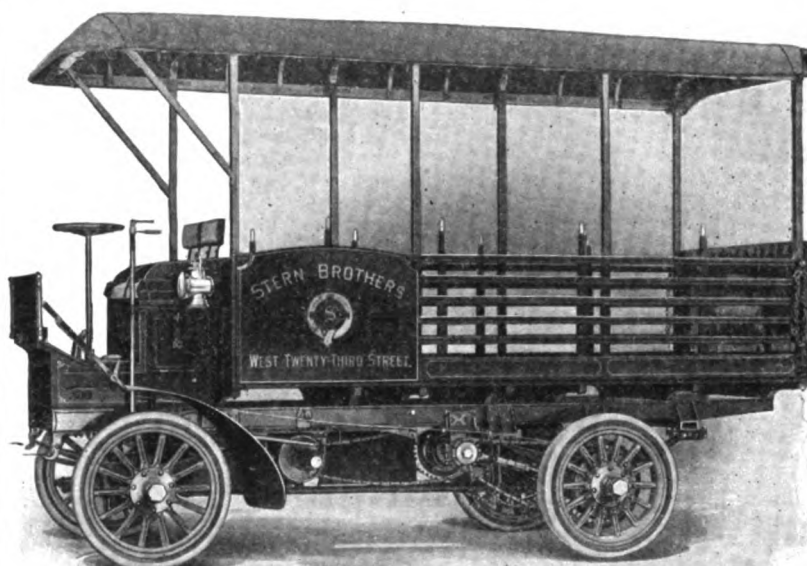
MINNESOTA

The freight rate on eggs from Mankato to Chicago has been raised from 30 cents to 40 cents.

The rates on butter and eggs from St. Paul and Minneapolis to New York have been raised to \$1.05. An increase of 13 cents per hundred on these com-

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modities will be made on New York and Chicago business from all Southwestern Minnesota and Eastern Iowa points.

MISSOURI

Permits for two freight houses for the Frisco-Rock Island have been issued in St. Louis.

The business men of the West End of Kansas City are trying to induce the railroads to establish freight depots there.

The Cumberland Gap Despatch, which operates into St. Louis over the Louisville & Nashville Railroad, has virtually decided to eliminate all the differentials at St. Louis on consignments from Eastern points and to apply the same rates for St. Louis and East St. Louis. Preparations are now being made to put the new schedule into effect, and the arrangements will soon be set forth in an official announcement.

MONTANA

Substantial reductions are to be made on freight rates to, from and between all Montana points on July 1. This is officially announced by I. Parker Veazey, attorney for the Great Northern. The rates will cover all shipments to and from this State and points between the Mississippi and the coast, and will be granted by the Northern Pacific, Great Northern and Union Pacific.

NEBRASKA

The Commercial Club, of York, at a meeting recently discussed the "Queer ways of railroad companies who do and can discriminate in rates against Norfolk, Hastings, Grand Island, Beatrice and York."

Measured by the size of the freight shipments that are handled daily through Fremont, railroads in Nebraska are riding on a wave of prosperity that is the biggest in their history. The Union Pacific is having about all it can handle with efficiency. The Sioux City & Western has an opening business that is surprisingly large. The Northwestern is almost swamped.

NEW JERSEY

The Bridgton freight line is now operating two boats between Bridgton and Philadelphia.

The new freight line that the Erie is building east of Port Jervis, N. Y., will be over twenty miles in length and will cut out a very heavy grade. One expensive feature of the new work is a tunnel a mile long at Guymard, and another is a steel, double tracked viaduct 3,200 feet long over Moodna Creek, which is said to be the highest in New York State. The contract for the viaduct has been let to a concern in Rankin, Pa.

Work has been begun on the River street freight station of the Pennsylvania Railroad, in Newark, and the First street freight station, in Harrison.

NEW YORK

The Lehigh Valley Railroad has a new scheme to divert from entrance into Buffalo a large portion of its through freight traffic by the construction of the Lehigh & Lake Erie line, ten miles around Buffalo. The little line commences at Tift Farm and connects with the main line of the company just

within the city limits. The route will cross the Lake Shore, New York Central, Pennsylvania and New York, Chicago & St. Louis roads.

The investigation of New York city's water front by a special commission appointed by Mayor McClellan has begun. This commission is at first to undertake an inquiry into the rentals which the city is charging the big steamship companies for piers and to adjust these rentals to a reasonable basis and then conduct an investigation for the purpose of evolving a plan for the further development of the waterfront, especially that in Brooklyn.

In face of an ultimatum by the Erie Railroad that it would begin without delay a rate war on the New York-Chicago passenger business unless the long disputed differential question were settled, the Michigan Central Railroad backed down and agreed to give up its differential, the granting of which has been so strenuously objected to by the smaller lines which have alleged that the Michigan Central is a "standard" line and not entitled to any favors. The agreement was reached at a meeting of the sub-committee of the Trunk Line Association and means the long threatened rate war has been averted.

President Cole's committee on public improvements, of which Nelson B. Killmer is chairman, has reported to Mr. Cole in favor of granting the franchise sought by the Pennsylvania-Long Island system for a connecting road through Brooklyn and Queens.

Fully fifty truckmen, clerks and "fences," it developed recently, were banded together under the generalship of one shrewd strategist in the conspiracy the authorities now are probing by which all the railroad and steamship transportation companies in New York city have been robbed systematically for more than a year of freight worth hundreds of thousands of dollars. The statement was made by a representative of one of the companies that will start new prosecutions as soon as the District Attorney's office disposes of the men charged with having victimized the Southern Pacific Steamship Company.

The Central Freight Association at its meeting at Chicago, held a discussion on the application of the Lockport Board of Trade to have the freight rates in this city placed within the Buffalo zone. The request was granted. The New York Central and Erie have already placed this city in the Buffalo zone as far as shipments from Lockport are concerned.

A special freight train of 31 cars of bananas which left New York over the Lackawanna for Minneapolis at 5 a. m., April 26, arrived at Minneapolis the evening of the second day, making the trip in 63 hours.

The Mobile & Ohio, together with the New York Central lines, has formed a transportation company to operate in and out of New Orleans in order to facilitate the movement of freight between New Orleans and Mobile and the East and Middle West.

The Pennsylvania Railroad has made arrangements to use the Bush terminal in Brooklyn. It is thought that the acquisition of property at Twenty-sixth street by the Lackawanna had something to do with the Pennsylvania's move.

Efforts are now being made whereby a freight transfer arrangement can be made between the Pennsylvania and D. & H. railroad companies for freight from the West to New England, and in the opposite direction by way of Birmingham.

The Pennsylvania Railroad-Star Union Line has issued a reduced tariff on binder twine, etc., as follows: Binding twine on cord for harvesters, in carloads of 30,000 pounds on basis of 20 cents per 100 pounds, New York to Chicago. Lath, yarn, cordage and twine (other than binding twine or cord for harvesters) when manufactured of jute manila or sisal in carloads of 30,000 pounds and on rope in carloads on basis of 25 cents per 100 pounds, New York to Chicago. This is a reduction of \$1 a ton in the rate. The rates to Chicago will be the minimum rates to points taking less than 100 per cent. unless present commodity rate is lower, in which case the present rate will apply.

Albany and Troy freight shippers are still trying to secure a reduction in water freight rates to and from New York.

NORTH CAROLINA

The berry crop from North Carolina this year was estimated at 2,700 cars and was a record breaker.

OHIO

The announcement of the formation of the Forest City Freight Bureau by J. P. Charles caused an amount of comment in railroad circles. A number of railroad officials proved hostile to the movement, and indicated that they would fight it. Others were inclined to favor the bureau, so that it would relieve the claim departments of importunate requests from small shippers, who really had no claim either from overcharge, loss or damage. Now that the bureau is about ready to start, a number of the smaller shippers in Cleveland have announced their intention to join, and it is expected that before the middle of June the bureau will be in operation.

The Toledo freight committee has recommended to the Central Freight

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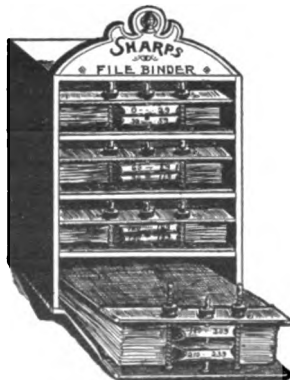
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OREGON

Portland-San Francisco boats have been unable to handle all the business offered at Portland, and it is expected that a third steamer will be put on to relieve the congestion.

General Western Freight Agent Blakeley, of the Northern Pacific, in response to demands made by the Portland Chamber of Commerce, has issued a tariff making a flat rate of 7½ cents for 100 pounds from Portland to Tacoma and Seattle on all freight destined to Alaska. This rate takes the place of a graded rate of from 30 cents for 100 pounds down, which has been paid by Portland shippers heretofore. Steamship lines running to Alaska have now partially agreed to practically absorb the 7½ cents handicap Portland shippers still have to fight by the present rate. The new rate applies only on business billed through from Portland direct to Alaska, and with the action of the Seattle steamship lines places Portland shippers on an equal footing with the Sound shippers in bidding for Alaskan business.

Southern Pacific is reorganizing its freight department and the system in vogue on the Oregon division a number of years ago is again being placed in use.

PENNSYLVANIA

The Lackawanna officials announce that new passenger and freight stations will be erected at once in Scranton, the former in a new location five blocks east of the present site, which, in turn, will be occupied by the new freight building. The company recently bought valuable land and buildings for the new station, which will also contain all the operating offices of the railroad and of the coal department. The new improvement will cost upward of a million dollars.

By June 1, it is stated, the Wabash will have its new connecting line with the Union Railroad of the Carnegie Steel Company in operation. Mr. Delano, after carefully inspecting the terminals at that point, said he was very well pleased with what had been done, as well as with the outlook for the future.

SOUTH CAROLINA

The Manufacturers, Jobbers and Bankers' Association, of Charleston, is arranging for a fight on the railroads to force them to observe the act of the Legislature of 1904, regarding the prompt handling of freights. The act gives the scale of time allowed to the transportation companies to haul the freight, and it appears that the railroads have been

paying no attention to the law, and the association has now decided to force compliance with the act to the end of improving Charleston's trade.

TENNESSEE

Officials of the Southern are not inclined to be interviewed about the matter and no official statements are made, but it is said that the Southern Railway is contemplating extending the yards and terminal buildings of the road at Birmingham as a part of the big improvements to be made in the South. These plans call, it is said, for the construction of a second big freight station to be built near the one at present nearest Twentieth street, and to serve as a receiving station, while the present building will be used as a shipping station. The erection, near Twentieth street of a brick structure of considerable size to serve as general offices for the road in Alabama is said to be also included in the plans.

On July 1, the first of the new fiscal year, the per diem increase on freight cars, which was recently advanced from 20 to 25 cents, will take effect. This applies, however, only to the roads in the southeastern territory. The railroads have had serious difficulty during the past few years keeping their cars on their own lines during the busiest seasons and the new per diem rates were made to have an influence on lines which persist in holding the equipment they get from other roads.

TEXAS

The Federal Grand Jury at Roswell, N. M., has indicted the Pecos Valley & Northwestern Railroad, a part of the Santa Fé system, for unlawfully granting rebates and for unlawful discrimination against shippers. The indictments are brought under the Elkins act, and it is alleged that sheep owners whose ranges lie west of Roswell and near the lines of the Rock Island, and who have made some shipments over the latter road, were induced to bring their wool to Roswell, a distance of from 40 to 70 miles, and ship it over the Pecos Valley.

At 3 o'clock on the afternoon of May 2 every wheel on the M. K. & T. system was stopped for five minutes, a period of mourning for the deceased executive, Henry C. Rouse.

VERMONT

The Rutland Railroad will increase its facilities for receiving and unloading freight in Rutland by an additional capacity of seventy-six cars.

The Central Vermont Railroad will erect a considerably enlarged freight house at Brattleboro.

VIRGINIA

A meeting of the melon growers of Peakes, Ashcake and Atlee was held recently, responding to a notice of Traffic Manager Gilbert, of the Chesapeake & Ohio Railroad. The object of the meeting was to make arrangements with the railroad company to handle this year's crop of melons, the arrangement of 1905 having expired.

A committee of three was appointed—Mr. Coles, of Peakes, and Mr. McDougal and Mr. Long, of Atlee—to prepare a request to be presented to the company.

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the committee will ask for a straight run, of \$40 per car, terminus Huntington, four intermediate stops, to be selected when billed out, with a free pass West to the shipper.

The Churchman Law establishing a rate of two cents a mile becomes effective June 15, but the railroads will resist its enforcement on the ground that it is unconstitutional.

The United States Shipping Company will make a test case on the ruling of the Norfolk Board of Harbor Commissioners, which, at the last meeting, decided to enforce the harbor masters' fee of \$10 per ship which has always been charged, but which the shipping company now declines to pay.

WASHINGTON

Substantial reductions on the freight rates of building material from Sound points to North Yakima have been announced by the Northern Pacific. The rates on paving brick have been reduced from 15 to 9 cents a hundred pounds; common brick to 9 cents; pressed brick from 15 to 12 cents; cement, 22 to 17 cents a hundred pounds.

Spokane lumbermen declare that the new freight traffic announced by the transcontinental lines, to take effect June 1, will increase their freights from 10 to 25 per cent. The woodworking interests are also opposed to the schedule. The new tariff takes into account the cubical capacity of cars, and, as well, specifies the minimum load, and this, the lumbermen say, will make it impossible for them to get minimum loads in the smaller cars in older equipment. Railroad officials say it is the intention to relieve the car shortage by compelling the lumbermen to put larger loads on cars.

The White Pass & Yukon has just issued joint rate tariff schedules for the 1906 freight and passenger business, extending the points in Alaska to which through business will be handled. The points to which freight will be handled on a through basis this season are Atlin, Dawson, Eagle (Fort Egbert), Circle, Rampart, Tanana (Fort Gibson), Chena and Fairbanks. Shipments in carload lots are effective from June 16 to July 31, inclusive, which is fifteen days earlier than last year. Group shipments will be effective from July 1 to August 15, inclusive.

E. H. Harriman, president of the Union Pacific and allied lines, addressing an audience of Seattle business men, denied that he is opposed to the Panama Canal, but warned the people against what he termed the "anti-railroad agitation," which is now so pronounced throughout the country. He said that, while water transportation should be encouraged, the people must not forget land transportation, which is of greater importance. This is Harriman's first public utterance on the subject of the Panama Canal. He promised the Seattle Shippers that the Union Pacific would reach the city as soon as the necessary franchises are granted to enable it to come, adding that construction would be commenced at this end of the line the moment opportunity offered.

MEXICO

The new freight tariff made out by the Mexican Railway Association has been put into effect, carrying with it a number of changes in the rates and

routings of commodities from New York to points in Mexico.

The new schedule raises the rates on all commodities shipped from New York to Mexican points with but few exceptions, about one cent, United States currency, per hundred pounds. The rate to Pachuca is slightly reduced.

The schedule was arranged by the traffic representatives of the principal Mexican lines who are members of the association and the rates to all points and the various classifications have been compiled in pamphlet form for the assistance and guidance of shippers.

NEW DAILY FREIGHT LINE

A new daily freight line between Milwaukee and New York has been put into effect by the Pere-Marquette-Lehigh Valley line. A daily through merchandise car will leave New York at 6:15 p. m., for Milwaukee, reaching here on the fourth morning. The car will also handle Milwaukee shipments from New England points. The train will leave Milwaukee daily via the Pere Marquette at 11 p. m., arriving in New York on the fifth morning.

PERSONAL MENTION

BARLOW.—T. R. Barlow is now general agent of the L. & N. at Pittsburg.

BARNARD.—Morley O. Barnard has been appointed general freight agent of the Northern Pacific at Buffalo.

CLARK.—Roscoe R. Clark has been made assistant general freight agent of the Berry Bros. Transportation Company in Milwaukee.

COLLYER.—R. V. Collyer has been appointed assistant general freight agent of the Wabash in St. Louis.

GOLDIE.—F. W. Goldie has been made traveling agent of the Pere Marquette out of Chicago.

HAMILTON.—B. A. Hamilton has been appointed traveling freight agent of the Northern Pacific out of Pittsburg.

HARTSOUGH.—J. H. Hartsough has been appointed general agent of the L. & N. at Chicago.

KNIGHT.—W. B. Knight has been appointed assistant freight traffic manager at Kansas City for the Missouri Pacific.

LINCOLN.—J. C. Lincoln has become traffic manager of the Merchants' Exchange Traffic Bureau at Kansas City.

MOSSMAN.—John J. Mossman has been appointed general agent of the Wabash at Buffalo.

NEVILLE.—Charles Neville has been appointed general freight agent of the Georgia Post & Piedmont Railroad with headquarters at Darien, Ga.

RIDGLEY.—J. A. Ridgley has been made division freight agent of the L. & N. at Atlanta.

SAWYER.—G. H. Sawyer, formerly of the Lake Shore, has become managing engineer of a railroad in Chile.

STEWART.—Arthur T. Stewart has been appointed assistant general freight agent of the Missouri Pacific at St. Louis.

THEOBALD.—Charles H. Theobald has taken the agency of Wells, Fargo & Co. at Galveston.

WEST.—A. L. West has been appointed assistant general freight agent at St. Joseph, Mo.

WILSON.—Charles C. Wilson has been made division freight agent of the Wheeling & Lake Erie Railroad.

FOREIGN

Mail advices from New Zealand bring particulars of a recent speech in which Premier Seddon vowed vengeance on the White Star Company, the Shaw, Savill Company and other members of the combine, and declared that all the powers of Government and Parliament would be used to maintain direct communication for New Zealand products with Manchester.

Mr. Lloyd-George, president of the Board of Trade, received a deputation from the Association of Chambers of Commerce of the United Kingdom in London, when speakers from Birmingham, Leeds, etc., complained of the preferential treatment accorded by British steamship companies to foreign freight. Among the members of Parliament present were Sir W. H. Holland, president of the Associated Chambers; Sir G. Scott Robertson, Mr. R. Barron, etc.

Sir W. H. Holland said a resolution had been passed at the annual conference of the Chambers of Commerce to the effect that the preferential treatment of which they complained, particularly in connection with shipments to South Africa, Australia and New Zealand, was injurious to the commercial interests of the United Kingdom, and that some steps should be taken to secure equality of treatment for British shippers.

Representative Fitzgerald, of New York, has offered an amendment to the item in the naval bill appropriating three and a half millions for the purchase and transportation of coal, limiting the freight on coal from the Atlantic or Gulf Coast to Manila to \$5 a ton. The law requires that the coal shall be carried in American bottoms, with the result, Mr. Fitzgerald claimed, of costing the Government an enormous amount.

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HEARINGS AND RULINGS BY STATE COMMISSIONS

GEORGIA

The State Commission has decided that it cannot at present recommend a reduction in the rates of the Georgia Southern and Florida and the Atlanta, Birmingham and Atlantic railroads. This conclusion was reached after an exhaustive hearing of the evidence of the roads and the State.

This same action was taken some time ago by the Seaboard Air Line, at the same time that a reduction was made of the rates on the Southern and Central railroads.

A body of fertilizer manufacturers and their representatives appeared before the commission and asked that body to take up the consideration of a reduction of rates on fertilizers from Savannah and Brunswick to Atlanta.

The commissioners, after hearing the representatives of the manufacturers, agreed to take up the hearing on May 31, at which time detailed figures will be produced.

The managers who appeared Wednesday before the commission to ask for the hearing were W. L. Peel, of the Old Dominion Guano Company; D. B. Osborne, manager of the Armour Fertilizer Works; H. A. Rogers, manager of the Swift Fertilizer Works; George W. McCarthy, of Adair & McCarthy Bros.; Manager Porter, of the Marietta Fertilizer Works, and H. T. Moore, traffic manager of the Atlanta Freight Bureau.

INDIANA

Oran M. Pruitt, president of the Indiana Car Service Association, has filed a petition with the State Railway Commission to have the rules of the Indiana Car Service Association revised and made fair to the shippers. Practically all of the railroads of the State belong to the association, and they are named as defendants to the action.

Mr. Pruitt asks for a general modification of the rule relating to demurrage charges. He argues that it is unfair to charge the shippers and receivers of freight \$1 a day demurrage after they have held their cars 48 hours as long as they are allowed no recompense or damage by the railroad company in case of non-delivery of freight, either through neglect of the road or otherwise.

He insists that the commission should establish a reciprocal arrangement, compelling the roads to pay the shipper when they delay freight, as well as charging the shipper or receiver for holding cars.

He also refers to the rules of the New England Car Service Association, allowing shippers 96 hours for unloading their freight. No allowances are made by the roads, he said, for lack of facilities on the part of the shipper or receiver for unloading freight or for their inability to get laborers at the right time. While there are many instances where freight is delayed from 60 to 90 days in transmission, there are no provisions for reimbursing the shipper for the loss, he added.

He asks that a ruling be made compelling railroad companies to move cars a reasonable distance every day for the benefit of the shipper. He also charges that the rule under which the roads refuse to deliver freight to shippers who have refused to pay demurrage charges is unfair and arbitrary.

The action of the Indiana Veneer and Lumber Company in filing its petition with the Railroad Commission is attracting interest among shippers throughout the State. While the petition was filed by the veneer company it has the support of the Shippers' Protective League of Indianapolis. This league would be pleased if any one that knows any facts that ought to be presented in the case could communicate such facts to the league's attorney, Edgar H. Brown, of Indianapolis.

KANSAS

The case brought against the Kansas railroads by the cattlemen asking for a reduction in the freight rates on cattle will come before the board of railroad commissioners for hearing July 25. The case has not been set for hearing before, because some of the cattlemen were not ready to present their evidence. It is charged by the cattlemen that the freight rates on cattle are much too high. Carr W. Taylor, attorney for the board of railroad commissioners, asked that the hearing be held in Ashland, the county seat of Clark County. There was objection to this place, and the board decided to have the hearing in Topeka.

KENTUCKY

The railroad commission has given several hearings on the charges of alleged discrimination of freight rates brought by Bowling Green shippers. The most of the evidence produced showed that Bowling Green pays from 75 per cent. to 150 per cent. more than either Clarksville or Nashville does on the same kind of shipping notwithstanding the fact that both those places are a longer haul and that all are river points.

It is almost certain that the commission will ask for a new depot here.

LOUISIANA

At a joint meeting of the legislative and freight transportation committee of the Board of Trade it was decided to recommend the enlargement of the powers of the State Railroad Commission. These recommendations will be forwarded as backing for the commission's petition for an increase of power in the regulation of railroad traffic in Louisiana.

The Railroad Commission created a stir when it presented a set of car service rules as a basis of discussion. It was expected by the New Orleans delegation that the rules proposed by the New Orleans Board of Trade would form the basis of discussion, and the rice mills of Southwest Louisiana and the lumber interests of Northwest Louisiana had representatives present to combat them.

At the hearing the railroads, through Hunter C. Leake, agreed to the commission's rules, suggesting a few minor changes. James L. Wright, representing the American Rice Brokerage Company, of Crowley, opposed the Board of Trade rules, and announced a preference that no set of rules be adopted. The hearing extended late into the night before the matter was finally taken under advisement. It is generally believed

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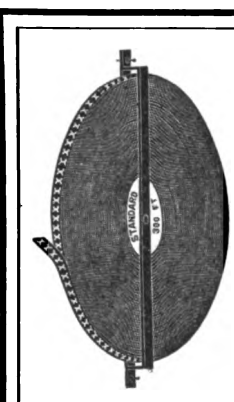
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NEW YORK

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that the rules adopted will be substantially those presented by the commission.

NORTH CAROLINA

An unusually large number of complaints are coming in to the North Carolina Corporation Commission as to delays in the movement of freights by the railroad companies in all parts of the State, and it is said that the only plausible explanation of the situation is that the freight shipments are increasing to such a phenomenal degree that the roads in many instances find themselves absolutely unable to move the freight as fast as it is tendered by the shippers.

MASSACHUSETTS

A decision in favor of the laying of freight tracks across Lewis street and in Webster and Marginal streets, East Boston, has been announced by the Railroad Commission. This grants the petition of the National Dock & Storage Warehouse Company, which asked for the tracks as a means of connecting their docks with the New York Central Railroad.

Trolley freight rights are being actively sought by the Connecticut Valley Street Railway, the company that operates a north-and-south line in the valley towns between Greenfield and Northampton. Local grants giving a blanket privilege have been secured from the selectmen of Deerfield, Whately and Hadley, and the company has now come to the Railroad Commission seeking that board's approval. The board has given a hearing on the matter May 22.

The Railroad Commissioners have granted the petition of the Old Colony Street Railway for approval of an extension of the company's trolley freight rights in Brockton and nearby towns. This includes all the main routes in Brockton where the company was not previously authorized to do a freight and express business and also gives authority for freight and express service between Brockton and the towns of Abington, Rockland and Whitman. These towns will now have regular trolley freight in and out of Brockton, and Brockton will have a through car to and from Providence by way of Taunton.

MINNESOTA

Minnesota shippers and jobbers interested in the proposed reduction in freight rates on merchandise were given a hearing before the State Railroad and Warehouse Commission. The hearing was a continuation of the hearing held last month, when the railroads presented their objections to the proposed tariff schedules. Winona shippers and jobbers took a decided stand against the proposed schedules, while representatives of Mankato, Rochester, Moorhead and Fergus Falls favored a change in the present rates.

The hearing broke up abruptly, owing to the refusal of those urging a change in rates to be cross-examined by C. A. Severance, attorney for the railroads. After a ruling by the Commission that Mr. Severance had a right to cross-examine the witnesses, the shippers and jobbers present favoring the proposed schedule took their coats and hats and proceeded to leave the room.

NEW YORK

Further testimony was offered before the State Railroad Commission as to

the plans of the Buffalo, Lake Erie & Niagara Railroad Company, for a connecting terminal railroad around Buffalo. Evidence as to the necessity of such a line to promote the industrial development of Buffalo and relieve the congested condition of freight movement at Buffalo was presented.

The Buffalo, Lake Erie & Niagara Company have planned a new harbor at Bay View on the lake shore protected by a breakwater 4,000 feet long. The company also has in mind the construction there of piers capable of accommodating sixteen of the largest lake freighters, extensive freight yards and immense warehouses so that all the facilities for transshipping freight from boats to cars and vice versa would be available.

After encircling Buffalo, the company plans to have another terminal on the Niagara River. Its main line would run to the river practically at the city line and then would run along the river bank to Tonawanda.

The proposed harbor at Bay View would be large enough to permit of the development of dockage facilities capable of accommodating 32 of the largest lake boats.

Another argument advanced in favor of the granting of the company's application for a certificate of public necessity from the State Railroad Commission is the plan of the State and National Governments for the development of the Niagara River. As is well known, the western terminus of the new barge canal is to be the Niagara River near Tonawanda, and it is claimed that it will be greatly to the advantage of Buffalo and Tonawanda and also to the shipping interests in general to have a terminal railroad connecting with the barge-canal terminus. The Commission adjourned until June 15 when the hearing will be resumed.

TEXAS

The Texas & New Orleans Railroad Company has applied for permission to increase the rates now applying on cordwood and on general merchandise to which class rates apply on that portion of its line known as the Dallas-Sabine division, extending from Sabine in Jefferson County, to Dallas in Dallas County, a distance of 318 miles.

The commission gave a hearing to consider complaints made by the Sandy Creek Lumber Company and C. B. Wilcox wherein it is alleged that the Gulf, Colorado & Santa Fé Railway Company has failed and refused to accept and transport shipments of lumber and other freight tendered to it by the complainants at points on its line of road for transportation to points in Texas, or to supply cars necessary to move such shipments in accordance with demands made therefor.

Several hearings have been granted on the proposition to reduce rates on sugar and molasses from 50c l. c. l. and 33c carloads to 44c and 27c maximums, respectively. No action has yet been taken by the commission.

The commission had ordered that Class D, with a minimum of 30,000 pounds, and Interstate regulations as to car mixtures, shall apply on shipments of paints, dry, and oil and putty. Varnishes and stains are not to be included in such mixtures.

Class E was ordered to apply on shipments of cement and concrete building blocks, minimum 24,000 pounds.

THOS. C. MOORE

FREIGHT TRAFFIC MANAGER

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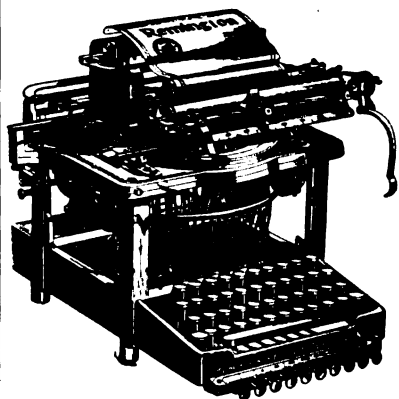
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VIRGINIA

The State Corporation Commission has given a hearing in the case against the Southern Railway brought by the business men of South Boston, alleging persistent disregard of the demurrage laws pronounced by the commission.

There has been a contention on for some time between the Southern road and the shippers of South Boston over rates, demurrage and excess charges, and much correspondence has resulted between the railroads and the shippers. This is the first time that the case has gotten to the commission, however.

The hearing in the matter of classification of railroad freight rates will be continued on June 5.

No decision has yet been reached in the complaint of the Barker-Jennings Hardware Company vs. the Norfolk & Western Railway. The question at issue is the form of receipt used in shipping goods. The railroad insists on using a form which, it contends, meets the case, whereas the complainants desire to print and use a form practically similar to that of the railroad's, but which they hold is more convenient and far less cumbersome and complicated.

WISCONSIN

The commission gave the Wisconsin Cheesemakers' Association a third hearing on its complaint that the rates for the transportation of cheese, whey, butter and materials used in the packing and care of these were excessive and unreasonable. The cheese men have been fighting for lower rates on their products for years. The complaints were particularly directed against the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul and the Illinois Central.

It was complained that the rates for transportation of cheese were excessive and enabled the Eastern manufacturers to compete with the Wisconsin manufacturers in the large markets of the Central West. The rate on butter made from whey, which brings about seven cents per pound, is about the same as that on dairy butter, which brings twenty cents per pound. The rates on tin foil in which limburger cheese is wrapped, on cheese boxes and other materials were excessive, the complainants declared. The railroad representatives contended that the rates were not excessive, that the products were unusually valuable, requiring special care and attention, that the rates compared favorably with those charged in other States, and that the railroads as a whole were doing the best they could to develop all of the industries of the State.

A hearing has been granted on the complaint filed by the Manitowoc Malt- ing Company with the State Railway Commission demanding a joint rate from the Northwestern and Wisconsin Central roads on grain shipments to and from Manitowoc. It is charged that the companies have separate rates, which are unreasonable.

The Medford Fruit Package Company of Medford, Taylor County, secured an order against the Wisconsin Central, Northwestern and Milwaukee roads, requiring that the rate charged for freight on berry boxes set up and crated shall be the same as that charged on "nested" boxes. This order is to stand until September 1, so as to cover the present season which is about to open. The commission declares that the entire classification of rates on fruit packages is

in need of careful revision, and the commission invites the railroads to file a revised schedule of rates for approval not later than September 1.

The commission looks with disfavor on the practice of railroads holding up localities for gifts of land in exchange for providing adequate facilities.

John B. Gruber & Co., of Catawba, Price County, was successful in his complaint that the Minneapolis, St. Paul & Sault Ste. Marie road refused to maintain adequate freight and passenger accommodations at that place. The company agreed to make improvements if the citizens would give free to the company a generous piece of land. The citizens tried to do this, but some owners demanded remuneration and the company flatly turned down the matter. The company would not allow the Gruber firm to build a warehouse conveniently to the tracks. Complaint was made to the commission. The plaintiffs substantiated their claims. An order was issued requiring the company to construct a suitable depot, described in the order, and to provide requisite side-tracks and shipping platforms. The "depot" now at Catawba is an old dilapidated boarding car. Private parties have a shipping platform, for the use of which they levy upon shippers. The commission orders that the company provide these facilities without charge to the shippers and patrons.

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Wholesale Dry Goods

Demand for American Goods in Foreign Markets

(These reports are collected from a number of sources, all of which are believed to be thoroughly reliable.)

The market in Asiatic Turkey for calicos, prints and various other cotton textiles has never received the attention it properly deserves from American manufacturers. The value of the total annual imports of such goods into the Asiatic provinces of the Empire now exceeds \$20,000,000. Smyrna is the principal distributing point.

Steam plows and modern agricultural machinery are in demand in the British West Indies.

The governments of Argentina and Chile have granted concessions for a new railway to cross the Andes at La Cumbre, 28 miles long, the estimated cost of which is \$7,300,000.

For the year 1905 Great Britain's exports to China of various kinds of cotton piece goods aggregated \$50,000,000, and in all of Asia, exclusive of British India, \$85,000,000. This country's exports of cotton fabrics for the same year to Asia amounted to nearly \$37,000,000, of which \$34,000,000 went to China.

In the South American markets Great Britain has sold \$32,000,000 of the same class of goods and the United States less than \$4,000,000.

There is an increasing demand for farm machinery in the Republic of Guatemala.

Japan has just commenced the development of its water power. Electric, power and other companies are now being formed with large capitalization.

American cash registers are finding a large sale throughout Peru.

The most important concern in Bavaria handling horsehair is J. L. Hoenigsberger & Co., of Munich. There is a big demand for the article in that country.

The market in China for biscuits is large and growing immensely larger. American concerns can obtain a share of this trade. American soaps are finding a market in the Far East.

American flour mill machinery is finding a market in Japan. Recently four complete plants were sold for new mills to be erected there.

There is a growing demand in Japan for cream separators. The separator, which has had the monopoly in that market, is a small, hand one, from Denmark, and sold wholesale, f. o. b., port of shipment, at from \$32.50 to \$47.50; each having a capacity of from 13 to 28 gallons.

There is great complaint in England of the high charges on the railroads of South Africa. It is stated that the charge for conveying machinery to the mines, with whose success the future

prosperity of the colonies is bound up, is twelve times more on the Gold Coast Railway than on the Uganda Railway. A member of an English firm tells of paying \$15,000 for the transportation of two dredges and machinery by the railroad from Sekondi to Ashanti, a distance of 200 miles. The freight charges on a case of whisky for the same distance amounted to \$4.50. Articles of food and drink, nearly all of which have to be imported, are subject to the same disadvantages.

In Chatham and other cities of the province of Ontario, Canada, there is an active demand for electrical machinery, electric railway equipment and supplies, bridge and structural iron, builders' hardware, cement, street paving material, oil and gas well machinery and tools, and steel and cast iron piping. A year ago there were practically no American shoes on sale in Chatham, but today every dealer carries more or less of them. One dealer recently gave an order for \$9,000 worth of American shoes.

But two American vessels have entered the port of Bordeaux in ten years and they were private yachts. In the first six months of 1895 no less than 112 American vessels had entered and cleared at this port and brought cotton, sugar, tobacco, staves, whale oil and logwood, carrying back to the United States cargoes of wine, brandy dry goods, wheat, fruit and hardware.

There is an excellent opportunity for American manufacturers of first class furniture to open up a large market in Bavaria. The line of goods now sold there, which is of domestic make, is of poor material and cheaply made. The principal furniture dealers in Munich are: J. G. Böhmeler, Tal 12; George S. Emailhaus, Utzschneiderstrasse, 7; J. Emmersberger, Aeussere Maximilianstrasse, 8-10; Glogowski & Co., Kanfingerstrasse, 15; George Hannamann, Barerstrasse, 10; J. Hasenmüller, Blumenstrasse, 20; Franz Hannschild, Oberanger, 28; H. K. Liebermann, Landschaftstrasse, 6; Gebrüder Rehbock, Dienerstrasse, 20; Emil Weiss, Zweibrückenstrasse, 12.

If an agent is sent to work up the trade there is the possibility of selling quite a number of American pianos in Guadeloupe, West Indies. No American makes have as yet been introduced there.

There is an increasing demand in South Africa for small fire extinguishing appliances.

There were imported in Aden, Arabia, last year 131,676 pounds of candles, mainly from France—not one from this country. American firms could secure some of this trade. The popular size is 6 inches long and weighs 1½ ounces, 8 to the package and 100 packages to the box. The best brand retails at \$9 per box; other grades at \$6.50. The wholesale importers at Aden are Livierato Freres, Caracanda Freres, Menahem Mesa, Mazzucchelli & Perera, Cesar Tian and Societa Coloniale Italiana.

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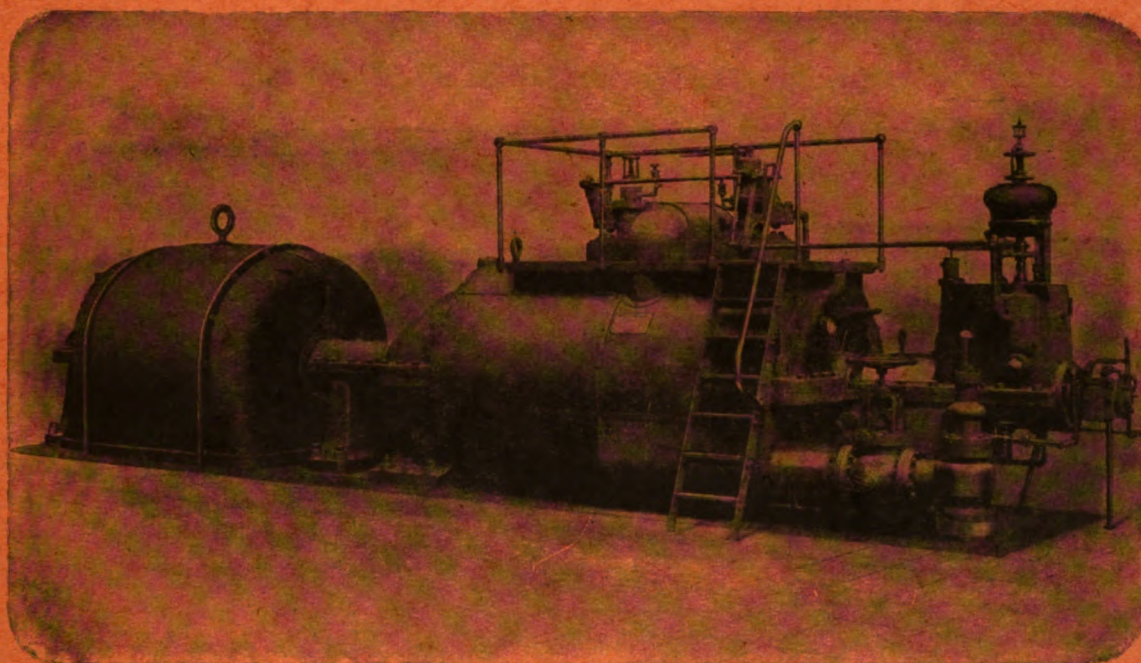
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HILDKRETH VARNISH COMPANY, New York, N. Y.

LOUISVILLE VARNISH COMPANY, Louisville, Ky.

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Full Text of the Rate Law of 1906

AT 11:15 on the night of Friday, June 29, the rate law of 1906 received the signature of President Roosevelt and will go into effect sixty days from the hour it was signed. The bill had been in the hands of the conferees three times, and the Senate finally acceded to the House amendments on the questions of passes and the control of pipe lines. The bill was passed by the House June 28 and by the Senate June 29. There was no division in either branch of Congress on agreeing to the conference report.

Franklin Lane, of California, whose nomination as an Interstate Commissioner was held up in the Senate for some time, was confirmed by that body on Friday. For the other two \$10,000 commissionerships several names have been mentioned, among them Edward E. Clark, of Iowa, grand chief conductor of the Order of Railway Conductors and member of the Anthracite Commission; John Maynard Harlan, son of Mr. Justice Harlan, of the Supreme Court, and Hon. Samuel H. Cowan, of Fort Worth, Tex. Here is the full text of the law:

An Act

To amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts Amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

"Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas by means of pipe lines or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country. Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid

"The term 'common carrier,' as used in this act, shall include express companies and sleeping car companies. The term 'railroad,' as used in this act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corpora-

tion operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

"No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employes and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of live stock, poultry, and fruit; to employes on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employes, post office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which

the common carrier is interested, persons injured in wrecks, and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employes of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof."

"From and after May 1, 1908, it shall be unlawful for any railroad company to transport from any State, Territory or the District of Columbia to any other State, Territory or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in Section 13 of this act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in Section 15 of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money."

Sec. 2. That Section 6 of said act, as amended March 2, 1889, be amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line or by water, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal

charges, storage charges, icing charges and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation and facilities defined in this act.

"Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

"No change shall be made in the rates, fares and charges or joint rates, fares and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

"The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

"Every common carrier subject to this act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party.

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

"No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any

service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs; Provided, That wherever the word carrier occurs in this act it shall be held to mean common carrier.

"That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic."

That section one of the act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, be amended so as to read as follows:

Sec. 3. That section fourteen of said act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

Sec. 4. That section fifteen of said act be amended so as to read as follows:

"Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this act, for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed.

"All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such

period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

"If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

"The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this act."

Sec. 5. That Section 16 of said act, as amended March 2, 1889, be amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in Section 13 of this act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the Circuit Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the Circuit Court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order, and not after; Provided, That claims accrued prior to the passage of this act may be presented within one year.

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may

be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

"The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative or agent of a carrier, or any receiver, trustee, lessee or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of Section 15 of this act, shall forfeit to the United States the sum of \$5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney General, employ special counsel in any proceeding under this act, paying the expenses of such employment out of its own appropriation.

"If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the Circuit Court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

"From any action upon such petition an appeal shall lie

by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

"The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of 'An act to expedite the hearing and determination of suits in equity, and so forth,' approved February 11, 1903, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the act to regulate commerce approved February 4, 1887, and all acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney General in every such case to file the certificate provided for in said expediting act of February 11, 1903, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: Provided, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: Provided further, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the Appellate Court over all other causes, except causes of like character and criminal causes.

"The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals."

Sec. 6. That a new section be added to said act immediately after Section 16, to be numbered as Section 16a, as follows:

"Sec. 16a. That after a decision, order or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof,

without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order or requirement is in any respect unjust or unwarranted, the Commission may reverse, change or modify the same accordingly. Any decision, order or requirement made after such rehearing, reversing, changing or modifying the original determination shall be subject to the same provisions as an original order.

Sec. 7. That Section 20 of said act be amended so as to read as follows:

"Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, and from the owners of all railroads engaged in interstate commerce as defined in this act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees and other persons, and the causes thereof; the amounts expended for improvements each year, how expended and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of \$100 for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

"Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this act.

"The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

"In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of \$500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

"Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

"Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$5,000 or imprisonment for a term not exceeding two years, or both.

"That the Circuit and District Courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them.

"And to carry out and give effect to the provisions of said acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading

of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

Sec. 8. That a new section be added to said act at the end thereof, to be numbered as section 24, as follows:

"Sec. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December 31, 1911, one for a term expiring December 31, 1912. The terms of the Present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party."

Sec. 9. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the act to regulate commerce and all acts amendatory thereof shall apply to any and all proceedings and hearings under this act.

Sec. 10. That all laws and parts of laws in conflict with the provisions of this act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Sec. 11. That this act shall take effect and be in force from and after its passage.

Passed the House of Representatives February 8, 1906.

Attest: A. McDOWELL, Clerk.

FOREIGN RAILWAY FEATURES

[From London *Tit-Bits*.]

The news that the Belfast & Northern Counties Railway, of Ireland, has offered free traveling for ten years to proprietors or tenants of new houses along its line between Belfast and Lough Larne has been widely commented upon.

One of the chief grievances of male travelers has been the invasion by ladies of smoking compartments. The writer has noticed that the Midland Company has recently labeled a number—possibly all—of their smoking compartments, "Smokers only."

French railway carriages standing higher from the platform than ours do, it has long been a source of complaint on the part of ladies and invalids that they were most difficult to enter or descend from. The Paris, Lyons & Mediterranean Company is remedying this matter by the provision of portable steps for

the convenience of those who are not able-bodied. These steps are a yard in breadth and covered with thick carpet. The employees are directed to place them at the disposal of any one who asks for them.

Another most excellent regulation which has recently come into force on French lines, and which our own companies would do well to copy, is to the effect that any first or second class passenger traveling with valuables, such as specie, important documents, jewelry, paintings or the like, may have a compartment reserved for him either by paying the price of a single ticket or by the payment of a charge calculated on a weight ten times that of the package.

If the weight of the object or packages exceeds a certain fixed amount a whole truck is placed at the disposal of its guardian, and he is then allowed to travel free on condition that he keeps guard over his property and relieves the company of all responsibility.

Certain American railways, especially the South Florida and other Southern lines, carry clergymen, in the dress of their profession, free of charge. This is a most valuable concession to the clergy, whose parishes are, in some cases, as large as an English county. The late Episcopal Bishop of South Florida once told the writer that his average yearly journeying by rail within his own diocese was 4,000 to 5,000 miles.

Though English companies do not grant any such privilege to the Church, it may not be generally known that the late Bishop of Gloucester possessed a life ticket available between Cambridge and London. This was granted to him by the Great Eastern Company in return for services rendered at an accident which took place on February 20, 1860, and in which he himself was injured. The pass took the form of a silver medallion, and this is probably the only instance of any individual not connected with a railway company possessing a life ticket. The bishop used his curious privilege for more than forty years.

Speaking of free traveling, there is one railway in existence which does—or did until very recently—carry passengers altogether free of charge. This is the steam tramway which runs from Boma, capital of the Congo Free State, down to the River Congo. It was built and principally exists to carry goods from the town to the wharves, some miles distant, but four times a day it runs a couple of passenger coaches, in which anyone who pleases can ride absolutely free.

DELAY IN RELEASING CARS

[Farm Implement News.]

The movement of agricultural implements and vehicles for spring trade has been seriously delayed in some quarters by a shortage of cars. Some manufacturers were unable to procure half the cars needed for February and March shipments, although prepared to comply with the requirements of trade contracts in respect to dates of shipment. In response to complaints of customers they could only reply that

they were powerless to make shipments on time because of the car shortage, an excuse which many dealers no doubt refused to accept. Meantime, manufactured goods accumulated, taxing the storage facilities of the plants to the utmost. If storage under these circumstances could be accounted an item of expense, the loss, coupled with the extra insurance required, would have been very large. And in all probability some manufacturers were compelled to seek outside storage.

The responsibility for the car shortage is a divided one. The car equipment of the railroads is not adequate, and many large cars, especially adapted to the requirements of implement and vehicle shippers, are placed at the service of others. But a share of the responsibility must be placed upon some implement and vehicle trade factors—manufacturers, jobbers and dealers—for their failure to load and unload cars as quickly as possible. Where car service rules allow forty-eight hours for loading and unloading, the full time is often taken when only half is needed. It would make an important difference in the delivery of cars to shippers generally if every car was released as soon as possible, regardless of one's rights under the car service rules. Not infrequently it happens that the shipper or consignee prefers to pay demurrage for a day or two rather than load or unload certain cars within the free limit. This, under certain conditions, may be an advantage to them, yet it makes the car shortage more serious, and in the end may be the indirect cause of serious delays affecting their own later shipments.

The failure to release cars as soon as possible is not as a rule countenanced by the heads of establishments. The responsibility rests with their shipping forces, unless the manager's failure to issue positive instructions on the subject puts the blame upon him. Not long ago an implement jobber discovered that it was a common practice with his shipping and unloading force to deliberately and unnecessarily hold cars as long as the car service rules permitted. If a carload of goods, placed upon his switch during the night, was unloaded the following day, one or two machines or buggies were left in the car merely for the inexplicable purpose of holding it until the free time expired, causing a delay of twenty-four hours in releasing the car. If the car was wanted for an outgoing shipment this action would be justified, but the practice was followed indiscriminately, and cars for which the house had no use were held one day longer than necessary. He found, also, that it was customary for the men to quit work "with the whistle," leaving a few goods in a car which in ten minutes more would have been unloaded. Being a man who realized the effect of these practices upon the delivery of goods generally, he issued instructions forbidding them.

Of course, we are all agreed that demurrage regulations which are not reciprocal are unjust and unfair, and while there may be a measure of satisfaction in

deliberately holding a car forty-eight hours when it could easily be released in twenty-four, it should be borne in mind that this practice does not inconvenience the railroads one-half as much as it does other shippers, who are thus deprived of prompt service, and consignees whose goods are often so late in arriving that loss of trade results.

WASHINGTON SHIPPERS ACT

On the day on which the President signed the Rate Law, a committee of Washington, D. C., business men met and formed an organization for the purpose of securing better rates to and from that city. Those present at the meeting were Frank P. May, Benjamin W. Guy, R. P. Andrews, Monroe Luchs, E. J. Kelley, M. E. Ailes, A. K. Parris, John Joy Edson, B. F. Saul and C. J. Bell. Notwithstanding the fact that the capital has three business organizations, the Board of Trade and the Business Men's Association and the Washington Grain Exchange, it is thought that there is room for a Shippers' Association. A letter has been addressed to those doing business in Washington and whose lines require transportation facilities, seeking co-operation and urging that they join the new association. In the letter the committee state:

"This city is naturally well located as a distributing centre. There is a large section of the South which is directly contributory to Washington. There is no good reason, in our opinion, why we cannot largely increase our Southern trade if a shippers' association is formed along the lines similar to organizations of like character located in other communities. Richmond, Atlanta and other Southern cities owe much of their increased jobbing and shipping interests during the last few years to just such organizations as we propose to form in Washington."

This is probably the first move as a result of the rate bill for lower rates and different facilities.

NUMBERING FREIGHT PACKAGES

Following the agitation in FREIGHT for the numbering of cases and packages the American Hardware Manufacturers' Association, in convention at Hot Springs, Va., adopted this resolution:

Whereas, Under the most favorable circumstances, many goods go astray in transit from the manufacturer to the wholesale dealer, and,

Whereas, The railroad companies have established rules and regulations which are designed to facilitate delivery of said shipments, and,

Whereas, It had been unanimously decided that numbering all items of freight will obviate many of the difficulties arising in tracing lost shipments, and,

Whereas, Concerted action on the part of all shippers in this respect is now necessary; now, therefore, be it

Resolved, That from and after July 1, 1906, all shippers shall, in addition to the full name and address of the consignee, number all pieces, parcels, packages or boxes and insert such numbers in all shipping receipts and bills of lading, using therefor either a serial number of their own, or, if the order received indicates a number to be used, then such number as shall be so designated.

How the New Rate Bill Will Work in Practice

IN the July issue of the *Flour Trade News* John B. Daish, general counsel of the National Hay Association, says:

The amendment to the Interstate Commerce Law, as passed at the present session of Congress, has much in it to be commended. And it is to be regretted that it cannot be commended in its entirety.

For the shipper, whether he be a dealer in hay or other commodities, the bill naturally divides itself into three parts:

First, that definitive or substantive portion of the law by which the term transportation is to include, in addition to those instrumentalities and facilities of shipment which have heretofore been included by law within this term, all charges for services in connection with the receipt, delivery, elevation and transfer of property, as well as ventilation, refrigeration, icing and storage; by which the word railroad is to include bridges, ferries, switches, spurs, tracks and terminal facilities of every kind; by which it is provided that rates shall not be changed except upon thirty days' notice; by which the Commission is given the right to prescribe the form of accounts, records and memoranda which the carrier shall keep and which the Commission is authorized to examine; by which it is proposed that the issuing of passes shall be curtailed; by which express and sleeping car companies are made subject to the act.

Responsibility of Initial Carriers

Second—which is in reality a defining portion of the statute, but which nevertheless, from its importance, is deserving of consideration under a separate heading. I refer to the amendment placed in the act in the Senate by which the initial carrier is compelled to issue a receipt or bill of lading for goods intrusted to him, and is made liable to the lawful holder of the bill of lading for any loss or damage to the property caused by the initial carrier or any subsequent carrier over whose lines the property passes. And this provision prohibits a carrier from limiting the liability imposed by the act by means of any contract, receipt, rule or regulation. The initial carrier is given a right of action against the carrier on whose line the loss or damage actually occurs. This provision of law, if it can be sustained upon constitutional grounds, is one of the most important pieces of legislation which has been enacted in many years. The effect will be to immediately eradicate the abuses in the payment of claims. It is a matter of common knowledge that railroads pay claims when they are under no moral or legal obligation so to do, provided the party filing the claim is friendly. Such claims are paid as a matter of policy. The small or occasional shipper does not know that the large and regular shipper is paid his claims without hesitation. The large shipper has no interest in the fact whether or not the small shipper secures payment for his claim, being interested solely in his own bank account. For

years the carriers of trunk line territory have refused to be responsible for any loss or damage unless they be caught "red handed" in the act. As one proceeds west of the trunk line termini or south of the Potomac, he finds the carrier more willing to assume those obligations which under the law he ought to assume. The time was when the initial carrier was liable for the acts of the connecting carrier, and indeed he may be today but for the specific wording of the bill of lading. The making of a joint through rate is not in and of itself an evidence of liability. This provision of the law will doubtless be contested, and, if sustained, will be to the untold advantage of the shipper of hay as well as to the dealer in other commodities.

Remedial Features

Third, the remedial features of the statute. In brief, the intent of the statute, stripped of its legal verbiage, is that when the shipper complains on behalf of his locality or of the commodity in which he deals or of a favored rate given to another, he is authorized to file a complaint with the Interstate Commerce Commission. Under the amendment one carrier may complain of another. Opportunity is given to the carrier to reply to this complaint; the carrier must reply within twenty days; then follows a date for the hearing; the hearing of the testimony of the complainant takes place. As the complaint is frequently not precise and definite and as the complaint and answer frequently do not make specific issues of fact or law, it has been the custom for the carrier at the conclusion of the complainant's evidence to plead ignorance of the case which the complainant would put forth, and ask that a future date be named when the carrier will give its testimony. This date is set as far in the future as the ingenuity of counsel and the work and patience of the Commission will permit. The hearing of evidence on behalf of the carrier is finally had. And perhaps the complainant, wearied with the long litigation, will waive his right to put in rebuttal evidence in order to get a decision promptly. The decision is handed down, and the Commission in its opinion (which need not now contain findings of fact) finds for the complainant or for the defendant carrier. If the Commission finds for the railroad the complainant is at the end of his rope. If, however, the Commission find for the complainant, it issues an order to the carrier commanding it to cease and desist from the violation of the law, and the order is to take effect within such reasonable time as the Commission may determine. Up to this point in the proceeding the amendment to the law marks no change from the existing statute.

Carrier Has "Opening and Closing"

By the amendment the order of the Commission may be said to become self executing. Failure to obey it brings punishment upon the carrier; the penalty is \$5,000 per day. The additional punishment by im-

prisonment simply makes conviction of the offender more difficult. That the Commission might in some way err, the law provides that the Commission may be made a defendant in a suit to injoin, set aside or annul the order of the Commission. Such suits are to be brought in the Circuit Courts of the United States where the carrier has its principal operating office. If the carrier seek, upon the filing of the bill, a preliminary injunction, at least five days' notice shall be given to the Commission, and at least three judges shall hear an application for, and a majority of the judges shall concur in, the granting of an injunction. It may be technical to the layman, but the practical effect of trying to secure, either in term or out of term, three circuit judges to hear a specific case upon five days' notice, is that it is frequently impossible and always a disadvantage either to the other business of the court or to the case in which they are to sit.

In effect the sole changes in the remedial portion of the law are, first, that the orders of the Commission are self executing, and, second, that when in court the carrier gets the best end of the deal. It is the carrier's bill, and upon either the bill or a motion for an injunction the attorneys of the carrier having the opening and closing can twice address the court, while the Commission, being defendants, have the opportunity to address the court but once. No one, from the schoolboy in a debate to the experienced practitioner before the Federal Supreme Court, fails to appreciate the value of the opening and closing. It is of the utmost advantage.

The class of complaints which may be filed before the Commission have, it is true, been somewhat broadened, because all complaints are for the violation of the law, and the substantive portion of the law having been widened, the complaint can be made for the greater number of abuses.

Too Much Work for the Commission

Under the law the Commission will be a very much overworked body. The popular idea is that the law is an effective and efficient mode for the correction of transportation abuses. The Commission will be overwhelmed with complaints. I am aware of complaints which now are kept quiet until the law shall go into effect. Of the Commission, a majority must constitute a quorum. No provision is made that one of the Commissioners may hear a case and determine it, and, having determined it, that one of the aggrieved parties may ask for a rehearing before the entire Commission. In addition to the specific hearing of complaints, it has become the fashion to have the Commission hold special investigations, such as under the Tillman-Gillespie resolution. These investigations do great good, but as they occupy the time of the Commission from their regular duties under the act, it perhaps might be well to have the investigations made by other parties. The present personnel of the Commission are hard workers and will doubtless be able to make progress under the multitudinous duties which are thrust upon them. At least, let us hope so.

That the law was not expected to prove satisfactory can be gleaned from the report of the House committee, which said:

"No member of the Committee on Interstate and Foreign Commerce believes that the provisions of this bill will be satisfactory to all persons who may be affected by it, nor that it will be satisfactory even to those who desire legislation upon the lines of the bill. But it must be remembered that the bill involves great questions, involving thousands of millions of property and interests that are measured by hundreds of millions of dollars every year, and all sections of the country, and that complete harmony of sentiment upon any measure involving so much is not to be expected."

Constitutionality of the Bill

Many prominent attorneys consider the bill unconstitutional. If it be, the shippers have had handed them a "gold brick." Many think the law inefficient by reason of the costs of the proceeding before the Commission, by reason of the delay which is sure to result in securing the enforcement of any order made by the Commission, and probably by reason of the large number of complaints which will be filed before the Commission; in this the shippers have had handed them a stone. The situation reminds one of the young student of arithmetic who went at the proposition "too hard"; in reality he had simply to add and divide, but he went around Robin Hood's barn to secure the result. The plain and simple way in which to secure a correction of unreasonable rates was pointed out by Mr. Justice Miller in the case of *Packet Company v. Catlettsburg* (105 U. S. 559). Referring to the question of unreasonable rates the court said:

"There is no hindrance to trying this question in an action at law, where the verdict of a jury or the judgment of the court in one or two cases would establish what is reasonable under the circumstances, and, this being once established by the appropriate tribunal, the court of equity could restrain the excess."

This decision is not only well founded in law, but also there are many other decisions affirming the doctrine.

No one would advocate today that the shipper should employ counsel and pay the costs of a proceeding in court. It is the duty of the Government *parens patriæ* to undertake the correction of transportation abuses; the Government must stand the expense, because the correction is for the benefit of the public, and, further, if uncorrected by the Government, it will not be corrected at all. And yet, acknowledging in every sense of the word that no shipper can afford to conduct a case, many people stand on the street corners and elsewhere and loudly proclaim that the shipper must prove his case, and then the Government undertake to substantiate the findings of its administrative body before a judicial tribunal. Even in the recent case against the Milwaukee Refrigerator Transit Company, a competing line contributed to the fee of the Government counsel. The Attorney General said he was without funds to undertake the prosecution. The competing

refrigerator line must either pay counsel or go out of business, and naturally, of two evils, it chose the lesser. This is wrong. If we are to have a government of the people, by the people and for the people, let the people as a whole protect its individual citizens in a matter which not only affects the individual, but thousands of others.

The hay people can find no more to commend in the act than other shippers—perhaps not as much. They have not been the recipients of passes; their interest in pipe lines is usually less than their interest in pipe dreams. Their interest, however, in securing a

correction of the existing unreasonable rates upon hay is great. For nearly six years they have been struggling under a rate which is not only unreasonable but extortionate. A rate which cannot be justified upon any theory except that the commodity is a necessity, and being a necessity it must bear whatever rate the carriers see fit to put upon it. Hay, as a commodity, is no nearer a reasonable rate under the new law than it was under the old.

The new law furnishes an extension ladder with which it is proposed to scale the railway wall, but the heels of the shipper are by the same law greased.

Canadian Car Service Rules in Operation

THE Board of Railway Commissioners for Canada have issued an order governing car service, together with a memorandum respecting the rules for the information of the public. As the subject is one of constant discussion in the United States the order and the memorandum are herewith given in full:

BOARD OF RAILWAY COMMISSIONERS FOR CANADA

MEETING AT OTTAWA,

THURSDAY, THE 25TH DAY OF JANUARY, A. D. 1906.

Present—A. C. KILLAM, *Chief Commissioner*.

HONORABLE M. E. BERNIER, LL. D., *Deputy Chief Commissioner*.

JAMES MILLS, M. A., LL. D., *Commissioner*.

Whereas, Numerous complaints have been made to the Board of Railway Commissioners for Canada with respect to the charges made by railway companies for delay in the loading and unloading of cars, and the rules regulating the same;

And Whereas, It appears to the board that all such charges and rules should be disallowed, and that, in cases in which railway cars are, or are to be, loaded or unloaded by shippers or consignees, railway companies should be authorized, subject to the rules hereinafter contained, and by way of compensation for unduly prolonged detention and use of cars and use of tracks, to increase, as hereinafter specified, their tolls upon traffic carried or to be carried in carloads, or at carload rates;

And Whereas, It appears to the board to be important, in the public interest, to secure the fullest possible use of railway cars, tracks and equipment, and for that object to discourage the delay aforesaid;

Now, Therefore, In pursuance of Sections 23, 25, 257 and 275 of the Railway Act, 1903, and of all powers possessed by the board under the said act—

It is ordered that

1. Except as mentioned in the proviso to paragraph numbered 4 of this order, all tolls or charges heretofore charged or imposed by any railway company for delay in, or additional time used in, the loading or unloading of cars, whether under the name of demurrage, car rental or car service, or otherwise, and all rules regulating the same be and the same are hereby abolished and disallowed; and all railway companies subject to the jurisdiction of the board shall henceforth cease to impose and use the same.

2. Except as mentioned in the proviso to paragraph numbered 4 of this order, every portion of any freight tariff, or bill of lading, of any railway company providing for a charge

for delay in the loading or unloading of cars, or for demurrage, car rental, or car service, be and the same is hereby disallowed, and that the following tolls and rules be and the same are hereby substituted for such charges, and for the rules regulating such charges.

3. The railway companies be and they are hereby authorized to cancel the aforesaid portions of their existing freight tariffs, and to substitute the tolls and rules hereinafter specified, by the publication and filing of general notices in lieu of individual supplements to the various tariffs.

4. This order, and the rules hereinafter set forth, shall come into force and take effect on and from the first day of March, A. D. 1906; provided that nothing in this order, or in the rules hereinafter set forth, shall be deemed to apply to or affect the loading of cars delivered, or placed, for loading prior to the coming into force of this order, or to the freight delivered to a railway company for carriage before the coming into force of this order.

5. All freight traffic, in carloads or less, which is, or is to be, loaded or unloaded by the shippers or consignees thereof, shall be subject to the following rules, to be known as "The Canadian Car Service Rules":

Rule 1.—When cars are held under load, or awaiting loads, beyond the free time allowed by Rule 2, for any reason for which the consignee or shipper is responsible, a toll of \$1 per car, per day of twenty-four hours, or any part thereof, shall be charged to, and paid by, the shipper, consignee or other party responsible therefor, in addition to all other tolls paid, or payable, in respect of the goods carried, or to be carried, in or on such car.

Rule 2.—Twenty-four hours shall be allowed the consignee, after notice of arrival, in which to pay the tolls or charges (if any), and give orders for special placing or delivery (subject to Rules 11 and 15).

Forty-eight hours free time shall be allowed for loading or unloading (except as hereinafter provided). On cars placed for loading, or unloading, before or at 11 o'clock a. m., the free time shall begin at 1 p. m. following; if placed after 11 o'clock a. m., the free time shall begin at 7 o'clock a. m. following.

Exceptions: (a) Twenty-four hours additional free time shall be allowed for unloading coal, coke and lime, in bulk, and for loading or unloading the following descriptions of lumber only, namely, boards, deals and scantlings.

(b) Five days free time shall be allowed at Montreal, and at tide water ports, for unloading lumber and hay for export.

(c) In the portion of Canada to which the Manitoba Grain Act, 1900, and its amendments, apply, only twenty-four hours free time shall be allowed for loading grain.

(d) Twenty-four hours additional free time shall be al-

lowed for clearance of customs, where the destination is a port of entry, making the allowance for clearance of customs, and for giving, placing or delivering orders, forty-eight hours in all.

Where the destination is not a port of entry, forty-eight hours shall be allowed for clearance of customs at the outside port of entry.

Rule 3.—No car service toll shall be charged for Sundays or legal holidays.

Rule 4.—Car service tolls shall not be collected from the consignee for any delays for which the customs officials may be responsible.

Rule 5.—Cars shall be so placed as to be easily accessible at all times during the period allowed for loading or unloading. At stations where such placing is at the time reasonably practicable, cars shall be placed so as to be easily accessible on both sides. Time lost to the shipper or consignee through interruption, either by movement of trains, or shunting of cars, or any other cause for which the railway company is, or may be held to be, responsible, shall be added to the free time allowance.

Rule 6.—If wet or inclement weather, according to local conditions, renders loading or unloading impracticable during business hours, or exposes the goods to damage, the time allowance shall be extended so as to give the full time of suitable weather. But if the parties neglect or fail to avail themselves of the first forty-eight hours, or seventy-two hours, as the case may be, of suitable weather, they shall not be allowed additional free time by reason of such neglect.

Rule 7.—When, owing to conditions for which the railway company, or connecting railway companies, is or are responsible, or to any neglect or default of its or their agents or employes, or to storms or floods, or to accidents on a railway, or accident to the equipment of the railway company or companies, cars are tendered to the consignee in numbers beyond his ascertained reasonable ability to unload within the authorized free time, such additional time shall be allowed as may be necessary, with the exercise of due and reasonable diligence on the part of the consignee, to unload the cars so in excess.

Rule 8.—The consignee shall be promptly notified of the arrival of his freight, and shall be held to have been notified when notice of arrival has been delivered at his address, or place of business; provided that, if such notice be given later than 6 o'clock p. m., it shall be considered not to have been received until 7 o'clock the following morning. If notice be mailed, the consignee shall be held to have been notified at 7 o'clock a. m. of the day following.

Rule 9.—If the consignee fail to give placing or delivery orders within the twenty-four hours allowed by Rule 2, the car shall be considered to be intended for public team truck delivery and shall be placed accordingly; and, if not unloaded within the free time, such car shall be subject to the car service toll.

Rule 10.—The railway agent shall notify the consignee or his carter, on application, where his car has been placed for unloading. Any time within the free time allowance lost to the consignee in so doing, for which the railway company is responsible, shall be added to the free time allowance.

If a car has been placed before 7 o'clock a. m., and at that hour the agent or his representative is unable or fails to inform the consignee or his representative, on application, as to the placing of the car and where it has been placed, then the free time shall not commence until 12 o'clock noon following, unless the consignee commences to unload before noon, in which case the time so lost to the consignee shall be added to the free time allowance as aforesaid.

Rule 11.—Freight for which the railway company holds previous or standing orders from consignee for placing on designated tracks or private sidings, shall not be entitled to the extra twenty-four hours allowed by Rule 2 for paying

freight charges and giving, placing or delivery orders, but when in bond shall be entitled to the twenty-four hours allowed by Rule 2 (d) for clearance of customs.

Rule 12.—When both cars and tracks are owned by the same private party, no car service tolls shall be charged.

Rule 13.—The delivery of cars to private tracks shall be considered to have been made when such cars have been properly placed on the tracks designated, or when they would have been so placed but for some condition for which the shipper or consignee is responsible. If cars cannot be so placed, the railway company holding them shall so notify the consignee, in order that he may have the opportunity of designating some other siding on which he is willing to load or unload, if he so desires.

Rule 14.—If, after placing, cars are ordered to another siding on the same road, at the same station, to complete loading or unloading by the same shipper or consignee, the free time shall be computed from the original placing, less the time occupied in replacing the car.

Rule 15.—If, after arrival at destination, a car is re-consigned under switching arrangements, the original consignee alone shall have twenty-four hours in which to give orders for special placing or delivery; and he shall pay \$1 per day, or any part thereof, for all time in excess of the twenty-four hours, so that the final free time of forty-eight hours, or seventy-two hours, as the case may be (authorized by Rule 2), shall still remain to the party who accepts delivery.

Rule 16.—If an authorized employee upon a railway which performs switching services gives notice that such railway is unable to receive cars for private sidings, owing to conditions for which the shippers or consignees are responsible, then any other railway company having cars for such consignees shall so advise them, and the car service toll shall be charged until the cars on such private sidings have been unloaded or loaded, as the case may be, or until such sidings have been otherwise cleared.

Rule 17.—Cars held in transit for inspection, grading, cleaning, bagging, completion or change of load, or change of destination, under a through rate from the original shipping point to the final destination, with or without a stopover charge, and detained over the time allowed for such purpose in the published tariffs, shall be subject to the car service toll. If such shipments are transferred to other cars, the car service tolls shall follow on the cars to which transfer is made.

Rule 18.—Manufacturers, lumbermen, miners, contractors or others, who have their own tracks and motive power, and handle cars for themselves or other parties, shall be charged car service tolls on all cars delivered to them from the time placed upon the interchange tracks until returned thereto, after allowance has been made for the time necessary for them to do the switching (not to exceed twenty-four hours), and for the free time authorized by Rule 2.

Rule 19.—Cars shall not be held back for the purpose of evading these rules. Loaded cars held back for cause must be reported.

Rule 20.—When cars are delayed or refused by consignees because of alleged incorrectness in the railway weights or charges, car service tolls shall not be charged if the railway weights or charges are proved to be incorrect.

Rule 21.—If payment of car service tolls properly due be refused, delivery of only the car or cars on which such car service tolls are due shall be withheld, by means of sealing or locking, or by placing where such cars only shall not be accessible.

If the owners or users of private sidings, or the owners of railways referred to in Rule 18, refuse to pay any car service tolls which may already be due, delivery of cars to such sidings or railways shall be suspended, and deliveries shall be made on the public team tracks until such unsettled car service tolls have been paid.

Rule 22.—In this order, and the rules therein contained:

(a) The singular includes the plural, and the plural the singular, and the masculine the feminine, as the case may be;

(b) Any reference to a rule by number is to be considered as a reference to that one of the foregoing rules which is so numbered;

(c) The expression "car service toll" means the additional or increased toll authorized by Rule 1.

A. C. KILLAM,
Chief Commissioner.

Memorandum Respecting Car Service Rules

Numerous complaints and objections have been presented to the Board of Railway Commissioners for Canada respecting charges made by railway companies for demurrage or delay in the loading or unloading of cars by shippers or consignees, and the rules governing such charges. Some of these complaints and objections go to the foundation of the charge, and challenge its legality. Others relate only to the rate, or to the rules or their administration.

The practice of railway companies, before the constitution of the board, was to charge lower tolls on goods in carload lots than for less quantities. This practice was sanctioned by the freight classification, and has been followed in the tariffs authorized by the Railway Act, 1903.

It appears to the board to be reasonable that railway companies which deliver cars to, or place them at the disposal of, shippers or consignees, for loading or unloading, should have some means of limiting the time to be occupied in the loading and unloading, and should impose a reasonable additional or increased toll on traffic carried at carload rates for any detention or use of the cars, or continued occupation of its tracks, beyond such time as is reasonably required for loading or unloading.

From the public point of view, it seems to the board that such a practice affords only a fair and just distinction between those who exercise diligence and those who do not, and is of general advantage in encouraging the rapid release of railway cars for further use.

After careful consideration, the board is of opinion that it is lawful for railway companies to make the carload rates higher in cases in which such delay occurs than in those in which it does not, and that it is within the power of the board to determine the amounts of the additional tolls and to make general rules and regulations governing their imposition.

In some cases, parties have asked that the allowance of the charge be made conditional upon a provision for what has been called "reciprocal demurrage," or some penalty or charge for delay by railway companies in supplying cars, or in receiving, transporting or delivering traffic. This latter subject requires more investigation and consideration than the board has yet been able to give to it.

The board deems it advisable to provide, as soon as possible, for the substitution of an improved set of car service rules, without the delay that would be necessary for investigation of and determination upon the other subject.

The board has also been asked to allow an average to be struck of the times occupied in loading and unloading various cars, giving credit to parties for surplus time not used as against overtime. The board does not think that there would be many cases in which this would result in any considerable advantage to such parties, and apprehends that any such advantage would be more than compensated for by the introduction of complications and grounds for dispute.

Objection has been made to the board against the system by which several railway companies have joined in an association or bureau for investigating cases of delay in the loading or unloading of cars, and enforcing their charges therefor. This appears to the board to be a matter of internal management on the part of railway companies, with which the board

should not interfere. It would be quite competent for any railway company to constitute a separate department and appoint separate officials for the management of this part of its business; and there seems to be no reason why several railway companies should not appoint joint officials for the purpose, or commit this work to a joint department. This system appears to offer some advantages in the way of securing greater uniformity in administration and providing some check on discrimination. The board hopes that railway companies will endeavor to secure the fair and impartial administration of the rules; and in case it is found that the giving of preferences cannot be otherwise prevented, it may be necessary to abolish the car service toll entirely.

The board can only view such a bureau as an agency, and such officials as agents of the railway companies concerned, and it has carefully avoided the adoption of any rule which might appear to confer upon any such body or officials the right of deciding disputes as between the companies and the public, or the power to bind any but the railway companies.

The impracticability of framing rules adequate for all cases is conceded, so that while these rules are made imperative, the board expects that, when in doubt, the officer appointed for the purpose will interpret them liberally, but without unjust discrimination or undue preference.

After giving every opportunity which seemed to the board to be reasonably possible for the various interests affected to present their views upon the subject, the board has adopted a set of rules to which it desires that a fair trial should be given. The compilation of these rules, and the settlement of numerous details, has involved a great deal of care and consideration, and has taken considerable time. The board recognizes that some interests may not yet have had notice of the inquiries being made, or an opportunity of fully presenting their views; and that, in some details, the rules now adopted have not come to the attention even of those who have discussed the subject before the board. On that account, although desiring that a reasonable time may be taken for a trial of the new set of rules, the board will give careful attention to any material representations respecting them which any party may desire to make.

The new rules are intended to take effect over the whole of Canada as respects all railways under the jurisdiction of the board.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, January 25, 1906.

GIVE HIM AN "IMMUNITY BATH"

Being converted, as he says, a tramp in Denver writes to C. C. Clark, general agent of the passenger department of the Big Four Railroad, that he wishes to pay for rides he stole on the bumpers of freight cars. He asks Mr. Clark to advise him concerning the best rates that can be given him. His letter is as follows:

"I rode on freight trains from Indianapolis to St. Louis three times; St. Louis to Indianapolis, three times; Marion to Indianapolis, three times; Indianapolis to Marion, three times; Alexander to Tipton, one time; Urbana to Indianapolis, two times; Indianapolis to Urbana, two times; Danville to Indianapolis, two times; Danville to Veedersburg, two times.

"I am converted now, and want to make things right as soon as I can. Give me best rates."

Mr. Clark says he will have to ask the writer to pay regular passenger rates. He is making out an itemized statement to be sent to the repentant one.

Mr. Lodge on Interdependent Railroad Rates

ON March 22 Senator Lodge addressed the Upper House on the rate question and gave some interesting examples illustrating the interrelation of railroad rates. The statement is impressive, as indicating an interdependence of rates which is not generally appreciated:

Course of the Railroads

The course of the railroads of the United States has naturally laid down between the industrial and commercial centres, between places of production and the various markets. The early railroads were built after this tendency from and to the cities that had grown to be commercial centres principally because of their advantageous position for the conduct of traffic by water—Boston, New York, Philadelphia, Baltimore, Savannah, Mobile, New Orleans and Galveston, because of their harbors on the Atlantic and the Gulf; Pittsburg, Cleveland, Cincinnati, Detroit, St. Louis, and Chicago because of their favorable position on the inland waterways. The development of the Western grain lands, to which Chicago was the natural gateway, and the great traffic that ensued between Chicago and New York led to the building of numerous railroads, which competed with the water routes between those cities.

Contests Between Ports

Second in importance were the channels of traffic between New York and Cincinnati and St. Louis, which led to the building of competing railroads between those cities and to Boston, Philadelphia and Baltimore, seaports competing with New York. The traffic between any of these Western cities and any one of these Eastern cities, whether eastbound or westbound, came into competition with the traffic between any other Eastern city and Western city, it being evident that certain regions beyond Chicago can also be reached via St. Louis, that certain regions beyond St. Louis can also be reached via Cincinnati, and that the entire European market can be reached through either Boston, New York, Philadelphia or Baltimore. The contests between these different commercial centres and seaports and the railroads connecting them gave rise to rate wars which were fierce and almost continuous, until, after many tentative compromises, there was attained the rate adjustment which is in effect today.

Base of Present Rates

By reason of the volume of traffic which flows between them the rate between Chicago and New York is the basis to which practically all of the rates east of the Mississippi and north of the Ohio River are adjusted. The rates between New York and Chicago, which are the result of contests that have been fought to a finish by the railroads and the communities concerned, are designated as 100 per cent. rates. The rates to and from intermediate cities and territories have also been arrived at through contest and compromise, and are established as percentages of the 100 per cent. rate—that is, the rate from New York to Pittsburg is 60 per cent.; to Cleveland, 71 per cent.; to Detroit, 78 per cent.; to Indianapolis, 93 per cent.; Peoria, 110 per cent., and to St. Louis 116 per cent. of the New York-Chicago rate. By arbitration and other adjustment the rates to and from Philadelphia and Baltimore bear a fixed relation to the New York-Chicago rate. Rates from Boston and interior New England points, rates from the territory surrounding Buffalo and Pittsburg, and from other interior points are established in relation to the New York-Chicago rate, as well as rates to and from Norfolk and other points in Virginia. Rates in the opposite direction—that is, from Chicago to New York—are also considered as 100 per cent., upon which basis are likewise made

practically all the West to the East rates from points on the Mississippi and Ohio rivers and the territory north and east thereof.

The Results Produced

If, therefore, a railroad rate upon an article of general production and consumption is reduced between an Eastern and a Western point in the territory specified, the equities and rivalries of other producing and consuming localities and the competition of carriers produce the following results:

(1) All railroad rates are reduced between all Eastern and all Western points in the territory described.

(2) Rates for combined rail and lake transportation are reduced.

(3) Rates via the Erie Canal and the Great Lakes are reduced to maintain the difference between them and the all-rail rates and the rail-and-lake rates.

(4) Rates on through traffic from and to points west of the Mississippi River and from and to points south of the Ohio River are reduced.

(5) Rates may be reduced to and from points in Canada. It has been estimated that a change in one of the rate bases mentioned has forced the changing of not less than 8,000 rates.

Maintaining the Equilibrium

Upon the 60 per cent. of the Chicago-New York rate fixed for Pittsburg are based, as the result of many years of controversy between competing manufacturers and rate wars between the railroads serving the several districts, the fixed differences for rates from the Mahoning and Shenango valleys, which are 40 cents per ton higher than the Pittsburg rate; from the Cleveland district, which is 60 cents per ton higher than the Pittsburg rate, and from the Johnstown district, which is 30 cents per ton less to the East than the Pittsburg rate. The rates on the raw materials that enter into the manufacture of pig iron—coke, ore and limestone—to the Pittsburg, the Mahoning Valley, the Shenango Valley and the Wheeling districts are adjusted in equilibrium so delicate that a change in the rate on ore, coke, or limestone to either of these districts would necessitate a change in the rates on these commodities to the other districts or else a change in the rate on the manufactured iron and steel from the district in which the rates on the raw material had not been adjusted. Likewise a serious reduction in the rates on the products of the furnaces at South Chicago and Joliet will necessitate changes from the Pittsburg district, and therefore from the Wheeling, Mahoning Valley, Shenango Valley, and Cleveland districts.

What Follows a Change of Rates

The adjustment of rates to and from points in the territory south of the Ohio and east of the Mississippi rivers depends not only upon the rates that are made from the West to the crossing points on the Mississippi and from the north to Cairo, Evansville, Louisville and Cincinnati, and other crossing points on the Ohio River, but on the rates by water from New York and Baltimore on the east and from New Orleans and Mobile in connection with the water lines to those points.

What follows the changing of one important rate in this Southern territory is exemplified by the following statement of what happened as a consequence of a recent change in rates from Baltimore to Atlanta and Louisville to Atlanta. Rates corresponding to the reduction from Baltimore were made from Boston, New York, Philadelphia, and other Eastern seaports, as well as from all interior Eastern and New England cities to Atlanta. Reductions corresponding to that from Louisville were made from Cincinnati, Evansville, Cairo and Memphis. These reductions from the Eastern seaports and the Ohio and Mississippi River crossings necessitated a reduction in the rates from every point in the United States north

or west of these gateways, and likewise a relative reduction from Virginia cities to Atlanta and reduction from the South Atlantic ports to Norfolk, Charleston, Savannah and Brunswick. The changes in these rates to Atlanta forced corresponding changes to the neighboring city of Nashville and a proportionate reduction to Chattanooga, Macon, Columbus, and other cities in Georgia. The change at Chattanooga in turn affected rates from Florence, Sheffield and Decatur; from Knoxville, Montgomery, Selma and Birmingham, as well as from New Orleans and Mobile. This change in the rates to Atlanta also ramified throughout Virginia and the Carolinas, the total changes necessitated by the initial change being not less than a hundred thousand.

Forced Reductions

Another traffic current which affects rates throughout a wide territory and in multiplied ramifications is that between Chicago and St. Louis and New Orleans. The roads tributary to this port naturally work to develop its traffic, with the result that lines leading from the grain and grazing regions of the West to the Atlantic seaports have had to make certain revisions in their rates. A reduction in the grain rate made in January of last year from Kansas City to Galveston forced reductions in rates on grain from the territory beyond and via Kansas City and Omaha not only to New Orleans, but to New York and Baltimore. Reductions were also forced to New Orleans from all stations in the grain raising States of South Dakota, Iowa, Minnesota and Illinois.

Changes similar to those which have been specified as following the modification of a rate from Louisville to a Southern point also follow the change in a rate from St. Louis to New Orleans or other Southern distributing point. In such a case the ramifications begin at Buffalo and Pittsburgh and extend westward to Arkansas, Indian Territory, Oklahoma and New Mexico, affecting the rates from these regions to points south of the Ohio and east of the Mississippi rivers.

Changes in rates that affect New Orleans and other points in Louisiana also affect the rates to and from Texas, the present adjustment of rates to and from Texas and Louisiana being as delicate as that in other regions of the South, where, as we have seen, a reduction in one rate may demolish the entire structure.

Mississippi Valley Conditions

The growth of population in the Mississippi and Missouri valleys had brought about a development of industry and commerce which causes an extensive interchange of traffic between the communities that range from Minnesota and Wisconsin to Tennessee and Arkansas and from the Dakotas to Colorado and Oklahoma. It is obvious that to and from many places in these regions traffic can cross the Mississippi or Missouri rivers at any one of several gateways. Therefore there has grown up a rate adjustment for this traffic the interdependence of which may be illustrated by a reduction in the rates on buggies, carriages and spring wagons recently made from Freeport, Ill., to points in Iowa, which immediately brought about corresponding reductions from Chicago, Peoria, St. Louis and Dallas, and then reductions from Milwaukee, Racine, Madison, Janesville, Beloit, Wis.; Kankakee, Bloomington, Decatur, and other points in Illinois to all points in Iowa and Wisconsin. These reductions spread from all shipping points east of the Illinois-Indiana State line to all points west of the Mississippi River. A reduction in the rate on wire and nails from Chicago to Denver brought similar reductions from other Illinois to all Colorado points, and had the effect of reducing the rates on wire and nails eastbound from the Colorado mills through all of the Missouri River gateways. The interrelation of rates in this region may be summarized by the statement that a change in a rate between St. Louis and either Kansas City, St. Joseph, Atchison, Leavenworth, Nebraska City, Omaha or Council Bluffs, immediately changes the rate to each other of these Missouri River gate-

ways and automatically reduces the rate between Memphis, St. Louis, Peoria, Chicago, St. Paul, Duluth, Sioux City, Sioux Falls, and all points between the Missouri River and the Rocky Mountains.

Applying the Chicago Rate

The rates from St. Louis, Mo., to St. Paul and Minneapolis are on an established basis, attained after compromise through the customary period of warfare, of 105 per cent. of the rates from Chicago to St. Paul and Minneapolis; the Chicago rates apply throughout Illinois as far south as Peoria, Decatur and Springfield. The rates from Chicago and Des Moines are made a percentage of the rates from St. Louis to Des Moines, and the rates from Chicago to interior points in Iowa, such as Cedar Rapids, Ottumwa and Marshalltown, bear a fixed relation to the rates from Chicago to Des Moines. The rates from St. Louis to Des Moines are fixed upon the rates from St. Louis to St. Paul and Minneapolis. Therefore a reduction in the rate from Chicago to St. Paul and Minneapolis would result in a corresponding change from St. Louis to these cities, which, in turn, would change the rates from St. Louis to Des Moines, which would change the rate from Chicago to Des Moines, and likewise the rates from Chicago to Cedar Rapids, Ottumwa and Marshalltown.

Two Western Examples

The complications that beset the making of rates between the regions east of the Rocky Mountains have their effect upon the rates to and from the Pacific Coast, which also must be kept in certain adjustment with the ocean rates, a change in the through rate via any route from any place of production in the East necessitating a change via any other route to any seaport competing with another seaport for the trade of the interior. Likewise, with the rates from the Pacific Coast. For example, canned, dried and green fruit and vegetables produced in California, Oregon and Idaho compete with one another not only in the West, but pretty much throughout the United States and in certain parts of Europe. A change in the rate on any one of these commodities via any route from any producing centre would bring about corresponding changes via other routes from the same and other producing centres.

As another example, sugar is produced and refined in Texas and Louisiana, and also in Colorado, Utah, Idaho and in California; sugar from Cuba is imported and refined at New York and Philadelphia. All of these places of production and refining compete for the markets of the Mississippi and Missouri valleys. Therefore a change in the rate on sugar from California to a Missouri Valley distributing centre would probably cause a change in the rate on sugar from New York, Philadelphia, Utah and Colorado. A change in the rate on any commodity from St. Paul to Butte, a distributing centre of Montana, would cause a change in the rate from every crossing point on the Missouri River to the distributing points not only in Montana, but in Utah and Idaho.

In short, the merchants of Chicago, St. Louis, St. Paul, Duluth, Sioux City, Omaha, Kansas City, Denver, Salt Lake City, Butte, Spokane, Seattle, Tacoma, Portland, San Francisco, Los Angeles, Galveston and New Orleans are all competing for the trade of the entire territory between the Mississippi River and the Pacific Ocean. The rate adjustment now existing is the result of experience, of competition between carriers, competition between communities, competition between the producers and between the distributors. It is an adjustment that is ever in unstable equilibrium, changes constantly being made to meet the fluctuating conditions of industry and commerce that in this region are peculiarly and intensely dynamic.

Chicago Controls the Cattle Market

For the grazing grounds that range from the Canadian boundary to the line of the Union Pacific Railway Chicago is the controlling market. If the rate for beeves from any point

in this vast region to Chicago is reduced, corresponding reductions must be made from the adjoining points, and these reductions affect the rates from all other points on the various railroads leading from that territory. As the cattle are on the hoof and can be shifted from one end of a range to another, often over a distance of two or three hundred miles, without damage or increased expense, this shifting can readily be made to a station on a road which has reduced its rates and away from the railroad that has not made a corresponding reduction. An attempt to adjust live stock rates through the Interstate Commerce Commission necessitated the inclusion in the complaint by certain of the live stock interests of all the railroads between Canada and Texas. But be it said that the complaint was far from unanimous, many shippers expressing entire satisfaction with the status.

Flour to the Orient

An interesting example of competition arose out of the enormous demand for flour in China and Japan during the recent war. Enormous purchases were made from the Minneapolis millers, who were quoted rates via the Atlantic seaboard and the Suez Canal. The railroads leading to the Pacific Coast were enabled, by the necessity of transporting cars to the coast, to bring East products of the Northwest and of the Orient, to quote the low rates necessary to secure shipments of this flour from Minneapolis to the Orient via Puget Sound. This rate, established solely to obtain this particular and temporary traffic, was so low as to cause the millers and farmers at interior points on the Pacific Coast to demand correspondingly low rates on their shipments for domestic consumption at the Coast. As it was impossible to grant their request, the low rates from Minneapolis were withdrawn.

The exposition just made applies to that interdependence of railroad freight rates which grows out of the competition between railroads, between communities, between producing centres and markets. There is another phase of this interdependence which grows out of the relation and competition between commodities themselves. It is a general principle that crude or raw materials should, other things being equal, pay lower railroad rates than the manufactured products. Therefore, for example:

- (1) Rates on pig iron are lower than rates on steel billets, blooms and ingots, which rates in their turn are lower than those upon finished iron or steel products.
- (2) Animal hides are accorded lower rates than leather.
- (3) Wool and cotton are accorded lower rates than woolen and cotton fabrics.
- (4) Rates on live stock are less than on dressed beef, and less on hogs than on hams and other provisions.
- (5) The rates on ore are less than the rates on bullion and matte.
- (6) Rates on lumber are less than on products manufactured therefrom.
- (7) Rates on denims are less than on overalls and jumpers.

One Change Necessitates Others

It therefore follows that a change in the rate on a finished product or on a raw material which is a factor in its production may necessitate changes on the other kinds of raw material and on the finished product. For example, a change in the rate on lumber would result in a corresponding change on articles taking lumber rates, such as lath, shingles, telegraph and telephone poles, and upon articles manufactured from lumber and taking higher rates, such as sash, doors, blinds and interior finish; or, as another example, a change in the rate on sulphur to paper manufacturing points would result in corresponding changes on other articles of paper stock, such as brimstone, caustic, soda, kaolin, copperas, potash, soda ash, ash, resin, ground clay and ground rock.

Relative Adjustments

That competition known in economics as "substitution"—the use of one commodity in the stead of another, if there is too great a variant in the price—compels the railroads in behalf of established industries to maintain a certain relative adjustment in the rates on competing commodities, for example, as follows:

- (1) Soap, soap extracts, soap powders, washing compounds, washing powders, and washing crystals, all of which are used for cleansing purposes and are commercially competitive.
- (2) Glue (animal product), dextrin (vegetable product), casein or milk curd (animal product), all of which are adhesives largely used for manufacturing purposes and directly competitive.
- (3) Hemp, sisal, manila and jute, all vegetable fibres, directly competitive in the manufacture of rope and twine.
- (4) Strawboard, wood pulp board, binder's board, box board, news board and chip board.
- (5) Corundum, carborundum and emerald.
- (6) The different kinds of paint.
- (7) The different kinds of paper.
- (8) Copper wire, copper rope, copper cable, insulated wire, insulated cable.
- (9) Wrought iron pipe, cast iron pipe, all iron and steel tubes.
- (10) Rolled oats and all cereal foods.
- (11) Raisins, dried prunes, dried peaches, dried apricots, dried pears.
- (12) Canned salmon and all other canned fish.
- (13) Canned fruits and canned vegetables.

The foregoing is, not by any means a complete statement, but simply an indication of the interdependence of the railroad freight rates of the United States.

"IMMUNITY BATH" ELIGIBLES

The House recently passed the so called immunity bill, which provides that the immunity provisions of the Interstate Commerce Act, the Department of Commerce and Labor Act and other acts, shall "be extended only to a natural person who, as a witness on the part of the Government in a proceeding authorized by any of said statutes, testifies on oath or in obedience to a subpoena duces tecum, produces relevant evidence."

Speaking to the bill and its effect on the new rate law, Representative Mann, of Illinois, said: "It is a change for the worse. It is a change which will prevent the Interstate Commerce Commission from obtaining testimony to enforce the rate bill which will soon become a law. The bill is taking away the power under which the Interstate Commerce Commission has operated in ferreting out the violations of law, because under this bill no one is immune unless called as a witness. You cannot send your inspector to inspect the books if any one refuses. You have no right to compel a witness to give testimony against himself unless you grant him immunity. While on the one hand we are seeking to increase our power over the books of railroad companies, on the other hand we are taking away our right to do that, and I predict that if this bill becomes a law it will not be three years before the gentleman from Maine (Mr. Littlefield), either in this body or the one at the other end of the building, is fathering and favoring a measure to give the very power which he is now taking away."

RECIPROCAL DEMURRAGE LAWFUL

Attorney General John D. Atkinson, of the State of Washington, at the request of the State Railway Commission, has written an opinion in which he upholds the power of the Commission to make and enforce a ruling requiring the railways to pay reciprocal demurrage for unusual delay in furnishing equipment. Following is an extract from the opinion:

"In endeavoring to seek and to give a correct definition of 'reciprocal demurrage,' I have discovered that the term is rather new and recent in both law and practice, but while it seems to be one of the latest of modern ideas, it has already taken hold and has become a vigorous growth in several States. The word 'reciprocal,' in its ordinary sense, would mean mutual, alternate or counterpart. Reciprocal demurrage, as applying to railroads and shippers, would mean in its chief sense, at any rate, a recompense, money, or demurrage due from the railroad to the shipper in pay for unreasonable delays and failure to provide empty cars in reasonable time for the use of the shipper.

"The railroads for many years have had rules and regulations established, wherein they claimed it as a right, and exacted as a matter of fact, reasonable demurrage from the consignee. This has been general with the railroads, not only throughout the United States, but in foreign countries. It has been almost universally admitted that railroads, under usual conditions, had the right of demurrage on unreasonable delays, etc.

"However, this right, as between transportation companies and the people, is in a very large measure, if not in every sense, mutual, interchangeable, alternate and reciprocal. The law of give and take, favor and be favored, live and let live, and do as you would be done by, is as necessary and as applicable between the people and the railroads as it is anywhere else in the world. The interests of the carrier and the people are exactly deserving alike, as are their rights to the fairest treatment possible from each to the other, and without that practice in vogue the greatest general prosperity is not attainable.

"The law creating the railroad commission in this State vests such body with power either upon complaint or upon its own motion after a hearing to make a finding that any reciprocal demurrage is unreasonable or insufficient and to declare what shall be in the future a reasonable practice to be followed. The right naturally exists for shippers and consignees to claim and to receive demurrage, or reciprocal demurrage, from the railroads for any or all unreasonable delays in the supplying of cars to shippers, and for any unfair disadvantage arising therefrom.

"I am of opinion that the present railroad commission under the law in this State is impowered by the procedure adopted in such law to declare a reasonable rule and regulation concerning, as well as in a measure to define, reciprocal demurrage, and that said rule may be enforced by the railroad commission; and that if the railroad commission of this State does establish

and undertake to put in force a fair and reasonable set of rules and regulations governing storage, demurrage, car service charges and of car detention charges, reciprocal demurrage for unreasonable delay in furnishing cars applied for, that they have such authority in law for so doing."

INFLUENCE OF THE MISSISSIPPI

M. C. Markman, traffic expert, makes this statement as to the influence of the Mississippi River in regulating freight rates:

The river, as can be readily understood, makes the rates from St. Louis to Memphis or New Orleans. The railroads running between those points, to get a share of the traffic, must necessarily offer rates approximating those made by the river craft. Chicago is not situated on the river, but it would be placed at a disadvantage as regards the Memphis or New Orleans trade if it were not put upon a relatively fair rate plane with St. Louis. A railroad company having a line running from Chicago to Memphis or from Chicago to New Orleans may have no interest whatever in St. Louis industries, and for this reason might be glad to give Chicago such rates as would enable it to compete with them. By so doing the Chicago railroad builds up the enterprises of the town it is interested in and reaps the benefit of getting an increased traffic therefrom.

There are many outlying towns of importance contiguous to Chicago. These also have their merchants and manufacturers who are seeking markets for their wares. Demands will be made upon the railroads which serve these outlying towns for such favorable rates as will enable them to market their products as against Chicago or St. Louis. It may be to the best interest of one or more of the railroads that these demands be complied with. Rival industries and manufacturing cities farther removed, that would be affected in the sale of their products by the favorable rates given the others, would follow in making like demands upon the particular railroads which they support, with the result that relief would at once forthcome.

Then, too, railroads running from other towns situated on the rivers, such as Cairo, Paducah, Evansville, Louisville, and Cincinnati, are obliged to make rates to river points approximating those made by the boats; and inland towns, whose trade may be affected by these, make claims on the railroads which serve them for such an adjustment of their rates as will equalize their disadvantages. Thus the demand would spread step by step, until almost the entire northern country had partaken in a measure of the low rates made necessary in the first instance by the river influence.

Nor is this all, for, taking the converse of the situation described, the rail carriers are confronted with a condition that abridges their power to uphold rates to and from the inland towns of the Southern States fully as much as in the Northern States.

CORPORATIONS AND THE PEOPLE

Summarizing his article on the relation of the corporations to the people, Judge Grosscup, of the Circuit Court of Appeals, recently said:

"Apart from the sin which excludes the people at large from participation as owners in the corporate domain, and the moral and economic consequences which flow from that exclusion, the corporation has proven itself, over and over again, a useful instrument in the promotion of progress.

"The sin pointed at is not one necessarily inherent in the corporation. The disease is one which can be eradicated, and this useful agency of civilization saved. As a means of wielding, for a common purpose, large masses of individual resources, the corporation can be owned as widely as the sources from which these resources come.

"But while the disease is not without cure, the cure must be *intelligently* applied. It will not come through the mere indiscriminate denunciation of corporations; nor by the mere passage of anti-trust acts; nor by the prosecution of the corporation simply because it is big. It will not come through the mere putting on the records of the courts of injunction decrees; nor by ignoring, or frittering away through court decisions, the just rights of incorporated property. It will not come by making angry passes at the institution of private property. It will come only when, accepting in sincerity the corporation as an institution of our times, a proven agency of progress and prosperity, we proceed to reform it, that it may become, also, an agency for the equitable distribution of the permanent fruits of progress and prosperity. Every other institution of America is built on republican ideals—the schools, the courts, the suffrage, private property as represented in the public landed domain; and every structure built on these foundations is today secure in the pride and appreciation of our people. The thing to be done with the corporate domain is to put it on like foundations—to put in motion here, as elsewhere, republican ideals—to put them on a footing that is intelligent and practical. That done, they will fight their own way to ultimate victory."

MR. BACON IS SATISFIED

Speaking to the Grain Dealers' National Association on the Hepburn Bill, E. P. Bacon, of Wisconsin, is thus reported in the *Grain Dealers' Journal*:

"The question arises: What has been accomplished? What have we got for all this exertion and labor? I wish to say, gentlemen, that I regard the bill as it has passed the two Houses of Congress, and particularly as amended by the Senate, as the most important legislation that has been enacted in the United States since the Civil War. It has gone much further than the gentlemen who have been at work to bring it about during this period of six years past had any idea of seeing accomplished at the time we commenced our

work. It has been our constant aim in promoting this legislation to restrict the bill to one or two vital points in order that these points might be enacted into legislation and might not be defeated by the infusion of other matters, which, while important in themselves, are far less important than the chief point we have sought.

"For myself I am greatly gratified that the provision has been adopted in regard to the judicial review, because it will give to the railroad interests a feeling that, if any injustice shall be attempted on the part of the Commission they will have recourse and have protection through the judicial review that has been provided for. In the bill that was prepared the most careful supervision was provided for. Under this present act the subject is submitted to the court only in a general way, and in my judgment the court will never enter into the subject beyond the question of whether the rate operates as a confiscation of the property of the railroad companies, whether it deprives them of just compensation for the use of their property, and to decide whether or not the Commission has exceeded its authority.

"As it now stands I feel that the shippers are placed on a full parity with the carriers, that we are not to go before them in the future as in the past, on our knees, asking for some concession in rate, which they may grant to us or not according to their arbitrary will, but we will go before them with a request for concession in rate with the knowledge on their part, if that rate is just and honest, that there is a power behind us that will force them to give us such a rate."

BUREAU OFFICIALS DEFENDED

To the Editor of Freight:

SIR—I read with interest an article entitled "Irritating Methods of Bureau Managers," in your June issue. I think the writer of that article should have had courage enough to attach his name to it. If he is having the disagreeable experience which he appears to have with the chairmen and officials of the various railroad associations he should not hesitate to come out and make the complaint under his own signature. As there are so many traffic managers, who represent shippers in this city, I think it is only fair that each one should assume his own responsibility. I take pleasure in saying that in my years of experience with the railroad associations and their various officials I have been treated with uniform courtesy, and have been fairly successful in securing for my clients all that they were entitled to. I believe that if a shipper has a good business proposition, and approaches these railway officials in a business-like way, that he will in due time secure all that he is entitled to. It gives me pleasure always to commend those who are courteous, and I would not hesitate to condemn any who are discourteous.

Yours very truly,

THOS. C. MOORE,

CHICAGO, June 4, 1906. Freight Traffic Manager.

Express Companies and the Hepburn Bill

BY JAMES E. JOHNSTONE

HE who will undertake to ascertain something of the express business in America will find, before he has proceeded to any degree at all, that he is "blocked," because no information can be secured through any of the companies. There is, of course, certain information which, as consignor or consignee, he can obtain, such as a copy of the receipt which he receives for his goods; but he cannot ascertain anything concerning rates except those applying from a few large cities, and then he finds conspicuously posted upon each page the legend that this company "reserves the right to change rates without notice." If, however, express companies shall be included in the Hepburn Bill, their rates, classifications and methods of business will be as subject to the Act to Regulate Commerce as the railroad companies.

The express companies operating in America today are: Adams Express Company, American Express Company, Canadian Express Company, Dominion Express Company, Earle & Prue's Express Company, Globe Express Company, Great Northern Express Company, National Express Company, New York & Boston Dispatch Company, Pacific Express Company, Northern Pacific Express Company, Southern Express Company, United States Express Company, Wells, Fargo & Company's Express, and Western Express Company. The mileage covered by these companies is far greater than that of the railways, for the reason that they operate over water lines as well as rail.

Growth of the Express Business

Three decades ago it was said by one competent to express an opinion on the subject by reason of his long connection with the business: "There is nothing that more clearly illustrates the nature and characteristics of American institutions, or more aptly exhibits the energy, progress and enterprise of the American people, than does the express service of this country at the present time. Born of a necessity, and from exceeding small beginnings, it has grown up with the country, occupying nearly every mile of railroad on this vast continent in one uniform system, and extending not only from ocean to ocean, but across both the Atlantic and Pacific, to Europe and China."

As these words were true thirty years ago, they are pre-eminently true today. From the beginning of the service in 1839, when one man was employed, or, rather, employed himself, it has grown to so vast proportions that the rail carriers today receive for their share of the total rates over forty millions of dollars, which probably indicates that the aggregate paid by the public for the transportation of express matter aggregates about one hundred millions. If to the transportation of property be added the amount paid for other service which is supplied by the express com-

panies, such as money orders, etc., the sum will be enormous. In passing, it may be noted that the amount received by the railroads for the carriage of the United States mail is only about 8 per cent. more than they receive for the express service.

To William F. Harnden belongs the credit for seeing a public want before the public appreciated that a want existed and for establishing an express service. In a Boston paper, under date of February 23, 1839, he advertised that, by arrangement with the Providence Railroad and New York Steamship Companies, he would run a car through from Boston to New York and vice versa four times per week, commencing on Monday, March 4; that he would himself accompany the car for the purpose of purchasing goods, collecting drafts, notes and bills; that orders of all kinds would be promptly attended to. The extra car was a fiction, for it consisted of a valise of the variety then in use. During the same month one of the Boston papers made editorial mention of the fact, and commended to prospective customers Harnden for his "honesty and fidelity in the discharge of his arrangements." Harnden, who had been a conductor and passenger clerk for the Boston & Worcester Railroad, took upon himself the duties of the stage driver, for that individual was, if anything, accommodating; he made purchases, carried packages and collected money for his friends and without hope of reward; Harnden began to perform the same duties for a reward.

Later Harnden, his health failing, established the firm of Harnden & Co., which extended their routes, established offices and increased the business in all ways. This firm was later absorbed with Adams & Co., Thompson & Co. and Kinsley & Co., and the new concern, on July 1, 1854, became "The Adams Express Company."

The genesis of the American Express Company was at Albany, where, in 1841, Henry Wells, an employee of Harnden, suggested to a friend an express from Albany to Buffalo. It is interesting to note the route. It was as follows: By railroad to Auburn, thence by stage 25 miles to Geneva, thence by rail to Rochester, thence by stage to Lockport 60 miles, thence to Buffalo by private conveyance 30 miles; the service was weekly, and occupied four nights and three days.

So much for the origin of the early express companies. Others sprang up, and the history of the various companies, of their consolidations, of their fights for business and of their divisions of territory, are not of particular interest. As a new company entered an old field there were rate wars, followed by agreements to divide territory. Thus today the United States is covered by express service. They use the

railroad, the steamboat, the ocean vessel, the stage, and, in fact, every known means of conveyance.

Express Companies and Railroads

The relations between the express companies and the railroads is a matter concerning which the public knows but little. It was said some years ago that a carrier received 40 per cent. of the gross receipts of the express company operating over its line. This is presumed to be the general rule, and from this can be ascertained the amount which is paid for express business. In 1904 rail carriers received \$41,875,636 from the express companies; this would indicate that the total amount paid by the shipping public for express services exceeds \$100,000,000 per annum. The amount received by the railroads from express companies represented, in 1904, 2.12 per cent. of the total receipts of the carriers. It is interesting to note that the amount paid railroads for carrying the United States mails is practically the same as that paid by the express companies to the carriers for the service rendered them. There has been an enormous increase in the amount paid to the railways for their service to the express companies, from \$24,000,000 in 1896 to \$42,000,000 in 1904.

It is true that the express business is not confined entirely to the movement of commodities as such, but they are engaged more or less in the banking business, for they issue money orders and drafts. While the companies deserve credit for taking an active and practical part in the economic development of this country, yet a careful consideration of the position which they occupy and the revenue they receive must lead one to the opinion that they are amply paid for all their services. They know no coin smaller than a "quarter." They do not look at small distances, and are entirely independent of every control, but will, in all probability, be included in the provisions of the act now pending.

The express business, from its beginning until today, has been largely made up of small undertakings which no one thought worthy of consideration. Those matters which were despised they have collected together and made into a substantial business. It has been said, and doubtless with great truth, that the territory is divided, and that, under some sort of an agreement, there is no competition between the several express companies, and that no one line will invade the territory which has been assigned to another.

Discriminations Exist

The business which is done in this country by express is done by the railroads and by mail service in Great Britain and on the Continent. From the time of our Civil War there has been competition between the express service and the mail service. The latter being slow to make changes, the companies have beaten them at every turn, so that the efficiency of the mail has been much lessened. Much matter which ought, under proper conditions, be transported as mail

is sent by express. As is well known, express service includes "collection and delivery"—one's goods are taken from his place of business and delivered to the customer's door. It moves by passenger or quick freight trains, and in many instances is a much more speedy and satisfactory method of transportation than any other.

The express companies have hitherto been unrestrained in their rates, and the tariffs are filled with discriminations and abuses. That there has not been some investigation can only be accounted for upon the ground that each consignor is milked but a little—just a trifle and too small and insignificant to cause him to object to the treatment he receives. In the aggregate, however, the amount is enormous. Personal discriminations are frequent; if one agree to make all his shipments by express he is given favorable rates. The classification is crude and is as full of inconsistencies as a sieve is of holes. The rates are changing, uncertain and no one knoweth them, until he makes a shipment. The conditions of the receipt are more ironclad and unfair, if possible, than those of the so called uniform bill of lading.

The strength of the companies in their practices is such that they dictate not only to the public, but to the carriers. There have been attempts to start independent companies, but such attempts have not been successful, and the "old line" companies have been placed in charge of the field. While the express business is necessary to our well being, yet it is certain that the public ought not to put up with the discriminations which abound.

(This article will be continued in the August number of FREIGHT.)

CARRIERS AND SHIPPERS

In a recent address delivered before the Traffic Club of Pittsburg, B. D. Caldwell, Vice-president of the Delaware, Lackawanna & Western Railway, speaking of the inter-relations between carriers and shippers, said:

"The carriers have for many years found it necessary to have as between themselves what are known as associations, formed for the purpose of conference, consideration and adjustment of matters of common interest which concern them as competitors. Problematical as it may now seem, it would not surprise us if many of us lived to see the day when associations will exist as between the carrier and the shipper and through which will be established platforms for consideration and adjustment of questions of mutual interest. There is a German adage which says 'You cannot make an association out of insincere men.' Neither can you produce a fraternity therefrom. It is the genuineness and sincerity of mutual support, the figure of clasped hands, the invincible strength of mutual upholding, the inspiring motto of 'I hold and I am held.'"

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WE maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from subscribers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers and carriers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically.

Subscribers who do not receive their copies of **FREIGHT** promptly each month will oblige the publishers by acquainting them with that fact without delay.

WHILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

THE delay of the carriers in accepting the propositions of the shippers relating to the liability of railways for loss and damage brought about no doubt the Carmack amendment to the Interstate Commerce Law.

It will be recalled that for about a year the shippers and carriers have been holding conferences upon this subject. **Mr. Carmack's Excellent Amendment** While these conferences were secret, it is said that the parties split upon the liability for loss and damage to shipments by reason of strikes. The carriers insisted that they ought not to be held liable for loss and damage occasioned by such causes. Fortunately or unfortunately the public are not advised if the conference split on other propositions. We regret the failure of the parties to agree. Had there been an agreement both sides would have been better off.

As it is, the Carmack amendment to the rate bill makes the initial carrier liable for "any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered," and the initial carrier is given a right of action, against the carrier on whose line the loss or damage occurs. The amendment may appear stringent. It is, however, no different from the early English law relating to carriers. There a jury were instructed that, where a common carrier receives a parcel addressed beyond its terminus and does not by positive agreement limit his responsibility to a part only of the distance, it is prima facie evidence of an undertaking on his part to carry the parcel to its destination, even though that place is beyond the limits within which the carrier professes in general to carry on his trade. Since 1841 this has been the English law. The Canadian courts and a few of our State courts have held the same view, but the larger number have held to the contrary.

To relieve themselves from liability the carriers have made special contracts limiting their liability to the line on which the loss and damage occurs. The plan has been productive of great injustice. Perhaps in the abstract it is not proper to make one party responsible for the wrong of another. Nevertheless claims for loss or damage are today paid largely, if paid at all, as a matter of policy; the small shipper has no chance—the large shipper gets his claim.

Under the amendment it will be necessary for the initial carrier to "deliver the goods" in specie—"in the shape and form mentioned" or "in coin." Without the unity of interests which connecting carriers now have it might work a hardship. As it is, it betokens fairness

all around. The lawful holder of the bill of lading, be he shipper, banker or consignee, knows that the document means more than a piece of paper $8\frac{1}{2} \times 11$ inches. The bill of lading proposed by Mr. Firth is that size, but its provisions mean all for the carrier and nothing for the shipper—a sort of a “heads,” railroad wins; “tails,” shippers lose proposition. Mr. Carmack deserves the commendation of every user of transportation facilities. It is a reversion to first principles, which are rarely unsafe.

“As long as the American Congress leaves in the hands of the railroads the fundamental right of rate making, as long as the people of this country, through their legislative body, leave in the hands of the railroads the power to fix their own valuations of their own property, upon which just and reasonable rates are sought to be levied—as long as these two great powers are left in the hands of the railroads, then I pronounce the Hepburn Bill, with all the remedial amendments impressed upon it by the Senate, as a mere delusion and a snare.”—*Hon. William B. Lamar, of Florida, in the House of Representatives, May 26, 1906.*

THE decision of Judge Baker, of the United States Circuit Court, in the case of the United States v. Milwaukee Refrigerator Transit Company and six railroads, deserves more than passing notice. The Elkins Law has again shown its effectiveness; the power of a Court of Equity to enjoin unjust practices has again been exercised; the strong arm of the Government to protect a shipper against unjust discriminations has received additional force.

The decision in brief holds that it is contrary to the statute for a railroad company to pay to a refrigerator car line commissions upon the business which that line gives to the railroad. It was alleged that the refrigerator company furnished the cars for the transportation of beer, and, furnishing the cars and the commodity, received from the railroads payment by way of commissions. This was held to be in violation of the law. The immediate effect will be to place all private car lines furnishing special facilities upon an entirely different basis. It will, also, doubtless change the relation which exists between certain so-called “transportation lines” furnishing cars and making arrangements for through routes. The time was when these transportation lines—color lines and dispatch lines—served a very useful purpose. They permitted a shipper to load a car which would run through to destination without transfer. They originated in the days before there was an interchange of cars between carriers, before there was any amount of mileage paid by one carrier for the use of a car of another, or before the per diem rule went into effect. With the enormous increase in the interchange of cars, these transportation lines have outlived their usefulness.

In a recent case it was shown that these lines had no financial backing and that a judgment against them for loss and damage was of no avail because an ex-

ecution must be returned by the marshal, for he could find no property belonging to the line. It has been said that these lines were created for the benefit of the officials of railroads; their cars were owned by car trust companies and leased by the line. Their business was entirely upon paper, and the salaries of its officers and agents come from the commissions which it receives upon the business given to the several carriers. Not only have these transportation companies outlived their usefulness, but are now, in all probability, in existence in violation of the Elkins Law.

A few more cases with the United States as complainant, a United States Circuit Court as the forum, unjust practices and unreasonable discriminations as the subject, and we may possibly find that we have had too much machinery to correct the transportation evils.

The number of bills and resolutions relating to interstate commerce, other than those providing for safety of passengers and employes, introduced into Congress, from 1862 to 1905, inclusive, is 693. The lowest year was 1869, with 1, and the highest, 1892, with 51 bills and resolutions. It is curious to note that in the year when the Maximum Rate case was decided, 1897, the number was 46. The average for the 44 years is 16 per annum.

THE recent sentence of imprisonment upon a person who was found guilty of accepting and giving rebates marks a place in the history of prosecutions to do away with railway abuses.

The punishment by imprisonment for the acceptance of rebates is brought about under an indictment for the violation of Section 5440 of the Revised Statutes of the United States. This section, originally passed in 1867, was a part of the Internal Revenue law. The original penalty was a fine of not less than \$1,000 nor more than \$10,000 and imprisonment not more than two years. The penalty under the present section is a fine of not more than \$10,000 or imprisonment for not more than two years, or both fine and imprisonment, in the discretion of the court. This penalty is applicable to two or more persons who conspire to commit any offense against the United States or to defraud the United States in any manner or for any purpose, where one or more of the parties do any act to effect the object of the conspiracy. The giving of rebates has been held by the courts to be an offense against the United States. In order to secure a conviction under this section, which has been interpreted to have a broader application than originally intended, by being included in the Revised Statutes, it is necessary to prove a conspiracy to commit a crime against the United States (that is to say, to commit an act made a crime by a United States statute) or to defraud the United States, and the doing of some act with the purpose of effecting the object of the conspiracy.

For the giving or soliciting of rebates, which, under the Elkins Law, are prohibited, one guilty thereof

is guilty of a misdemeanor, and if such rapid results can be achieved by the application of Section 5440 to an indictment, we see no reason why the provisions of this section of the Revised Statutes should not be applied to other violations of the act.

The Elkins Law makes every person or corporation giving or receiving rebates guilty of a misdemeanor, and a punishment by fine is provided. Read into this law is Section 5440, where two or more parties can be convicted of conspiracy in the matter of rebates. Section 10 of the Interstate Commerce Law, as amended March 2, 1889, provides that any one who shall unlawfully do or cause to be done any act, matter or thing prohibited or declared to be unlawful, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, such misdemeanor punishable by fine. It would appear that, if into Section 10 of the Interstate Commerce Law there be read Section 5440, where two or more parties, individuals, carriers or their agents seek to practice any of the discriminations forbidden by the act, and should do anything to accomplish such discriminations, a conviction could be had by the Government.

In view of the speed with which results can be obtained in this manner, we cordially commend to the prosecuting officers of the Government the value of Section 5440 in securing relief from unjust discriminations against localities and commodities. It has proved efficient in the matter of personal discriminations, and we see no reason why it would not be efficient in the other two classes. Discriminations against localities and commodities are not the results of the acts of a single individual.

The Pennsylvania has not paid a rebate since 1902—so say all the holier-than-thou officials. The Pennsylvania pays the Berwind-White Coal Company \$17,000 per year for certain work which the railroad does with its own employes and equipment. Ergo, the Pennsylvania has not paid a rebate.

ONE of the effects of the present crusade against carriers is to frown upon, if not declare criminal, the ownership or operation of other industries by the carriers. It is argued with great force that a transportation agency is chartered for the purpose of moving

Transportation Agencies in Other Pursuits

goods from one place to another; that it ought to be confined within those bounds, and that it should not own more land than necessary to accomplish the purpose for which it is organized. There is much in this contention. Opposed, it is said that there are certain carriers whose charters permit them to engage in mining, manufacturing and even general merchandising. Such being the case, it will be a violent discrimination to permit a carrier with an early charter of this kind to carry out the purposes for which it is organized and yet deny to a competing carrier the same right.

In the early history of railroading, interest was taken by the carriers in industries along its line for

the purpose of securing tonnage, developing the country tributary to it, and perhaps also for the purpose of adding to its revenues. Gradually the carriers have, directly through the corporation itself and indirectly through its officers and agents, taken larger interests, and thereby widened their influence. Today it is not unusual for a carrier to own a "line of elevators," which it leases to favored customers at nominal rentals, and by this device the only buyer of grain is the lessee, for others are denied the use of the same facilities, or, if permitted, only at exorbitant terms. Terminal elevators of large capacity at the seaboard are owned by carriers and leased to a favored shipper; if another wishes to transfer grain through them to a vessel the charge is about eight times the cost elsewhere. Cotton compresses are in some States owned by the railroads, and it has been charged that the rate of compression is dependent upon whom will fall the payment thereof. Terminal facilities, such as storage houses and refrigerating plants, are either owned by the carrier or in part by the officials of the delivering road. Carriers are engaged in mining and selling coal, both anthracite and bituminous, and where they are not directly engaged in this business, there is a closer union than in community of interest. Lumbering is another industry in which several of the carriers are engaged in like manner.

The question at the present time is not whether or not carriers are doing other than those things for which they were chartered, but whether or not it is wrong. Clearly, there never would have been the wonderful development of the resources of our country had the carriers not loaned a helping hand. Otherwise we could not have pointed with pride to the progress which this country has made. On the other hand, there is great room for corruption when a carrier is directly or indirectly engaged in a certain plant or industrial enterprise. The practice appears to have been productive of good, but has been attended by evils, and evils which have been denounced by the law. The difficulty is where to begin to draw the line; at what point to separate the good from the evil.

WE begin this month a series of articles on the express business of the country. To this branch of transportation little or no attention has been paid by writers or shippers. Those

Series of Articles on the Express Business

who have found it necessary or convenient to avail themselves of express service have done so without apparent regard to discriminations and abuses in which the companies have intrenched themselves. The writer of these articles desires us to state that owing to the strict rules of the express companies concerning the quoting of rates, furnishing of information about the volume of business or any other matter connected with the express company or the furnishing of blanks, due allowance must be made for possible errors in the articles.

Bills of Lading as Collateral Security

BY LEWIS E. PIERSON

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(An address delivered before the Virginia Bankers' Convention)

THE problem of providing facilities for the transportation of merchandise has taxed the ingenuity of man from Adam to the present time, and, as with each generation improvements have increased, so have the details and perplexities of the problem.

Many centuries ago our forefathers gave rough documents as evidence of the receipt of goods to be transported from one place to another, and the evolution of these receipts has gradually brought the bankers into the situation, as lenders on such documents.

Loans on Bills of Lading

Years ago this loaning was confined exclusively to receipts issued for ocean transportation, but with the advent of railroads and their receipts shippers began soliciting loans from the banks on these documents, or bills of lading, as they are today called.

On ocean bills of lading advances in almost every case are made through the purchase of drafts, bearing the shipper's indorsement and accompanied by documents which include, in addition to the bill of lading, an invoice of the value of the goods and insurance policies.

Inland bills, however, come to the banks in three ways: First, attached to drafts received for collection, no loans being requested; second, through the purchase of shipper's drafts attached to bills of lading bearing his indorsement, but, unlike ocean drafts, the domestic drafts are not accompanied by insurance policies and but seldom by invoice papers; third, at points of destination by direct loans on bills of lading, obtained through the payment by the borrower of drafts to which the bills of lading were attached.

In the short space of time since the railroads entered into the transportation of merchandise, the practice of loaning on inland bills of lading has developed to such an extent that today through almost the sole medium of loans on inland bills of lading, our bankers are financing the entire cotton crop, nearly all of the grain crops, as well as dried fruits, hides, tobacco, dairy produce and other agricultural products too numerous to mention, as well as shipments of ore, machinery, wool, lumber, canned goods and manufactured products, a total of \$2,500,000,000 being a conservative estimate as to the amount advanced by the banks yearly on bills of lading.

Certainly from these facts no fair minded person will doubt that the acceptance by the bankers of these documents as collateral has contributed largely to the wealth of our whole country, as well as to the individual prosperity of farmers, shippers and railroads.

It can therefore be readily seen how vital it is for the continuance and growth of these benefits that the interests of loaning banks be protected, as they rightfully should be, so that in case of non-payment they can obtain possession of the goods represented by the bills of lading.

The Ocean Bill of Lading

With the ocean bill of lading the responsibility for proper carriage and delivery is a rather simple proposition, involving but one carrier from point of issue to destination, the documents being accompanied by further protection in the shape of insurance policies.

The ocean carriers, however, years ago began to find the common law liability too onerous, and gradually inserted clause after clause in their bills of lading to exempt themselves from liability under certain conditions.

Where loss occurred the insured found it more convenient to collect direct from the underwriters, they having received a premium and their policies covering not only ordinary marine risks, but risks for which the responsibility of the carrier was uncertain.

The underwriters, however, in attempting to collect from the carrier, were subrogated by the courts to any right of action which the insured had against that carrier, and it was often difficult to determine without litigation whether the carrier's responsibility was or was not relieved by some of the exceptions noted in the bill of lading.

The Harter Act

As a result of these conditions, after protracted negotiation between the shippers, carriers and underwriters, Congress in 1893 passed the Harter Act, which in effect prohibits the ship owner from inserting in bills of lading any agreement relieving him from liability for negligence, in storing, loading or proper delivery of the goods, or any clause weakening, lessening or avoiding his obligation to exercise due diligence to properly equip his vessel and make it seaworthy. It further provides that should the shipowner exercise due diligence, his vessel be seaworthy, properly manned and equipped, he is not responsible for faults or errors in navigation or management.

Another clause requires the ship owner to issue a bill of lading, which shall specify the apparent condition and marks of the goods shipped; and a further clause provides a heavy penalty for the violation of any provisions of the act. The act in full reads:

"An act relating to navigation of vessels, bills of lading and to certain obligations, duties and rights in

connection with the carriage of property. Approved February 13, 1893:

"1. That it shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant or agreement, whereby it, he or they shall be relieved from liability for loss or damage arising from negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import shall be null and void and of no effect.

"2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, or owner, master, agent or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of such vessels to exercise due diligence, properly equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents or servants to carefully handle and stow her cargo and to care for and properly deliver same shall in any wise be lessened, weakened or avoided.

"3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel or owner or owners, agent or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, or owner, or owners, charterers, agent or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in the rendering of such services.

"4. That it shall be the duty of the owner or owners, masters or agents of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading or shipping document, stating among other things the marks necessary for identification, number of packages or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

"5. That for the violation of any of the provisions of

this act the agent, owner or master of the vessel guilty of such violation and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding \$2,000. The amount of the fine and costs of such violation shall be a lien under the vessel, whose agent, owner or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the government of the United States.

"6. That this act shall not be held to modify or repeal Sections 4281, 4282 and 4283 of the Revised Statutes of the United States or any other statute defining the liability of vessels, their owners or representatives.

"7. Sections 1 and 4 of this act shall not apply to the transportation of live animals.

"8. That this act shall take effect from and after the first day of July, 1893."

Since the enactment of this law its operation appears to have protected all interests concerned, including the interest of bankers advancing money on ocean bills of lading, they still being further protected by insurance policies accompanying the documents.

Inland Bills of Lading

With regard to inland bills of lading, however, there is at this time a lamentable chaos. These bills are not accompanied by insurance policies, and banks loaning upon them, in case of loss, find themselves in a position similar to that forced upon the underwriters on ocean bills, prior to the enactment of the Harter Act.

Where the shipper is responsible, recovery can be made; but in the numerous cases growing out of fraudulent practices of shippers, or others obtaining advances from the banks on bills affected in some way by fraud, the bank's sole recourse is upon the carriers.

Recovery from the carriers, however, is an altogether different proposition; bitter experience, through litigation in nearly every State, having proven, in the majority of cases, the inability to recover from the carrier either the identical goods or their value.

The railroads claim that the order clause in their bills of lading was inserted for the convenience of the shipper, in connection with his C. O. D. selling method, and was simply to control the goods until the purchaser paid the draft drawn against the sale, and took up the bill of lading attached.

Acting, therefore, upon the theory that goods would not be delivered except upon surrender of the bill and the further theory that the order clause carried to the transferee the security of the goods, banks and shippers, from the confidence gained through centuries of successful loaning on ocean bills of lading, have for years established the custom of loaning on inland bills of lading.

The shipper who pledges his bill to a bank has always intended and believed he does transfer to the loaning bank his title to the goods and his contract with the railroad, and the banks feel they have received from

their shipper such title and transfer; but years of experience and costly litigation, notwithstanding attempted corrective State legislation, have brought us to a realization that this condition does not and cannot exist with the document now in use.

Present Forms of Inland Bills of Lading

Now let us see just why this is so, and to properly understand the condition it will be necessary to take up the various forms of inland bills of lading at present issued by the carriers, the principal of which are:

- (1) The shipping receipt.
- (2) The straight bill of lading.
- (3) The order bill of lading.
- (4) The lake bill of lading.
- (5) The combined inland and ocean bill of lading.
- (6) The live stock special contract bill.

The Shipping Receipt

is a simple form of acknowledgment that goods have been received, and are to be conveyed to a certain destination and delivered to parties named therein. It is not intended, nor in any manner whatever to be considered, as being negotiable or as holding the goods represented.

The Straight Bill of Lading

is practically the same as the shipping receipt, but is a more pretentious document, providing, through numerous clauses printed on its reverse side, many waivers of liability under certain conditions, and until the word "order" shall be inserted on its face, it also makes no pretention of being negotiable, or of holding the goods until surrender of the document.

The Order Bill of Lading

is a straight bill of lading given certain qualities of negotiability and attributes as collateral, through the wording of clause 9 on the back thereof, which clause provides that where the word "order" is written on the document, the surrender of the bill shall be required when the goods are delivered; this clause being generally supposed to make the bill negotiable.

The Lake Bill

has the attributes of an order bill, but in most cases also has a clause inserted thereon such as "Care Consignee, John Doe, Buffalo," which permits the lake carrier to deliver the goods to the care consignee, take his receipt for the same, and thereby be released from all liability in connection with the shipment.

As the care consignee is in 80 per cent. of the cases the direct agent of the shipper, the goods are thereby returned direct to the shipper's control, even though the bill of lading may still be held as collateral by the loaning bank, and investigation has shown that a very small number of bankers who are loaning on these documents are aware of this dangerous condition.

The Combined Inland and Ocean Bill

is issued by a railroad from an interior point, and provides for delivery of shipment at a domestic ocean port to an ocean carrier, for transportation to a foreign port

without the issue of a new bill by the ocean carrier, and contains a waiver of liability on the part of the railroad, after its delivery of the goods on the dock of the ocean carrier, which results in there being a period of more or less length when there is absolutely no responsibility for the proper care or custody of the goods.

The Uniform Live Stock Contract

is issued to cover the transportation of live stock, and is a straight bill of lading with numerous special restrictions covering the handling and care of cattle en route, and limits the amount of damages that can be collected on the different kinds of stock, all live stock being billed direct to the stock yards in care of person who is to receive same.

Abuses in Issuing Bills of Lading

The issuing inland carrier, in its desire to facilitate detail for itself and its shipper, has adopted the custom of furnishing blank forms to the shipper which he is expected to fill out and present with the goods to the railroad agent for signature.

This has led to all sorts of abuses in the drawing of the document, so that it is rare for one not to be drawn in pencil or in any form which cannot be readily altered. And the carrier at destination, having received the goods at the hands of several intermediary carriers, has adopted equally loose methods for the proper taking up of the document upon the delivery of the goods.

The forms are of many colors, shapes and sizes, the inland bill representing possibly the most carelessly drawn commercial document in use at the present time, and it is hard to conceive how bankers, otherwise regarded as most careful in their transactions, have ever been induced to loan their money on such slipshod, unsafe documents.

Causes of Loss

Careful investigation has proven that when losses have occurred they have come to the banks almost invariably as the result of fraud, which has been easy of accomplishment through the loose methods of the railroads in issuing and taking up the documents; and there is every evidence that fraud is growing more frequent, as, through the bankers' ignorance of the dangers in loaning on bills of lading, the possibilities of imposing upon their credulity becomes more and more known to unscrupulous persons.

There are many ways in which these losses have occurred, the most frequent of which has been through the delivery of the goods at destination without taking up the bill of lading, the most serious loss from this cause being that incurred by the Merchants' National Bank, of Baltimore, which was to the extent of \$84,000.

Another cause has been through the fraudulent insertion of the word "order" on a straight bill of lading, so that the delivery carrier has no notice that the documents are to be required before giving up the goods. There are any number of losses reported from this cause, many of which amount to as high as \$25,000.

Another cause is through forged bills of lading, this being easily accomplished from the fact that the blank printed forms are furnished shippers, so that details can be filled out and the documents then receive the railroad agent's signature, which leaves it but a small matter for an unscrupulous person to go one step further and forge the railroad agent's name. Against this the bankers cannot guard without verifying the issuance of each document offered, a condition which would prohibit their handling this class of business. The most serious recent losses incurred through this cause were the celebrated Harroun forgeries, wherein bankers in the neighborhood of Kansas City suffered to the extent of \$140,000.

Another cause is where the original amount of the shipment has been raised, this being easily accomplished through the loose manner in which these amounts are now noted on the documents. There are any number of losses from this cause, fortunately none reported exceeding more than a few thousand dollars, probably owing to the fact that the value of shipments in a single car does not exceed a moderate amount.

Other losses are caused by the issuing of fictitious bills by freight agents in collusion with shippers, and still others have arisen from the issuing of duplicate bills of lading, with instructions for diversion of the shipment to a new destination.

These losses are increasing in number and amount, and when met always fall heavily upon a single institution, so that no average of loss, however carefully gathered, could fairly represent the risk to individual banks.

Trend of Decisions

Among the many recent sweeping decisions, which have cut the ground from underneath the feet of bankers who have looked upon bills of lading as security, is one rendered last month by the Supreme Court in the State of Washington, in the case of Roy & Roy against the Northern Pacific Railroad.

The effect of this decision is to practically take away from bills of lading all value as security for advances, unless a representative of the loaning bank can personally certify that the goods represented in the bill of lading were actually received by the railway company. The court decided that a transportation company cannot be held for its own bill of lading, issued by its authorized agent, even against an innocent purchaser thereof, if it can show that the goods were never actually shipped.

In Alabama, Mississippi and North Carolina the Supreme Courts have held that banks purchasing or advancing money on drafts to which bills of lading are attached, take over the position of the shipper, and therefore are guarantors of the quantity and quality of the goods represented by the bill of lading.

In cases against the railroads for the value of goods delivered to the holder of a bill of lading, without the surrender of the bill which was subsequently negotiated to a bank, there are decisions adverse to the banks.

based on the theory that the original contract between the carrier and the shipper had been fulfilled and terminated by the delivery of the goods at destination, and that, in spite of the order clause in the bill of lading, the loaning bank could not take over the shipper's position in the contract, and therefore had no standing under which they could rightfully recover.

We therefore see that the courts, on the one hand, say where the goods are delivered without the surrender of the order bill, the bank holding such bills does not acquire the shipper's title and cannot recover damages from the railroad.

On the other hand, the courts say that the banks do step into the shipper's shoes and are liable to the payer of a draft, where the condition and quality of the goods are not in accordance with the contract. A very simple and pertinent case of "tails we lose, heads you win," leaving the banks out of pocket whatever way the game is played.

Present Legislation

Now, let us see what legislation has been enacted with an idea of making these documents bankable security.

Other than the Harter Act on ocean bills, Congress has taken no action, and in thirty-three States there seems to be no legislation affecting the transfer of bills of lading as such, while in twelve States legislation has been enacted attempting to confer upon bills of lading the attributes of negotiability for the purpose of securing their free transferability. All of the acts vary in their provisions.

The general effect of these efforts to increase negotiability through legislation seems to have been to create a doubt as to the validity of a transfer, and after numerous decisions in almost every State, it is evident that the interpretation placed by the courts on the various statutes purporting to confirm the negotiability of bills of lading has successfully thwarted any efforts so far made to protect the innocent holders of the securities.

In Alabama, Louisiana, Arkansas, Minnesota, New York, Pennsylvania, Wisconsin, bills of lading marked non-negotiable are excluded from the operation of laws purporting to confer negotiability, and this fact accounts for the use by the railroads of bills of lading on which are stamped the word "Non-Negotiable."

Legislation in Alabama, Louisiana, Arkansas, Washington, North Carolina, South Carolina, Delaware, New York, Pennsylvania, Wisconsin, provides that the goods for which a bill of lading has been issued must not be delivered except on presentation of the bill, and that the bill must then be taken up and canceled, and all except Washington, North Carolina, South Carolina and Wisconsin provide a penalty for violation of the act.

Alabama, Louisiana, Arkansas, California, Montana, Nebraska, North Carolina, South Carolina, New Jersey, New York, Pennsylvania, Wisconsin, Maryland and Missouri have sought by legislation to forbid a car-

rier issuing a bill of lading unless the goods have actually been received, and they provide penalties for violation.

These laws and adverse decisions, with the present attitude of the railroads and courts, making recovery from loss practically impossible, must surely prohibit banks from continuing to make loans on bills of lading, a condition which cannot fail to result in serious curtailment of the operations of borrowing shippers, unless some adequate provision for the necessary security of the banks can be made.

Committees Appointed

The first serious attempt to bring about uniformity in inland bills of lading was made by a number of Eastern railroads some three years ago, who endeavored to inaugurate a so called uniform bill of lading drawn by themselves and conspicuously labeled "Non-Negotiable," so as to be excluded from the operations of laws purporting to confer negotiability in certain States previously mentioned. These words, "Non-Negotiable," served as a danger signal to banks, and, loans being refused, the shippers appealed to the Interstate Commerce Commission against the issuing of such documents. This appeal resulted in the appointment of a joint committee of railroad men and shippers, charged with the duty of formulating a new uniform bill of lading.

This joint committee having held a number of meetings, the American Bankers' Association at its last convention deemed it wise to have a committee of bankers present the phases in which bankers were interested. The bankers' committee, however, very much to its surprise, found this joint committee adverse to admitting bankers into their conference on the ground that they had agreed not to admit any outside interests.

Learning that the result of the Lakewood conference of the joint committee in December indicated a possible disagreement, the bankers' committee, after consulting with the president of their association, prepared a bill covering only the banking features of bills of lading, with the idea of having Congress enact the same into law; this procedure being taken as the matter was one of interstate commerce, and Congress has the right to regulate commerce between the States, as the Harter Act on ocean bills was a direct precedent, and as Congressional action would give relief much quicker and with more widespread effect than State legislation.

At a hearing upon this bill before the House committee, a number of objections were made to the form in which the bill was drawn, which, while not affecting the fundamental principles, afforded a ground for opposition. These objections have been carefully considered and it is believed are now met in a new draft of a bill which is drawn with a view of accomplishing the following results:

Points to Be Covered

1. To exactly define the measure or degree of negotiability which an order bill of lading shall possess,

without, however, employing for this purpose any language peculiar to the law of negotiable instruments, the nature of the subject not permitting the conferring upon a bill of lading the full measure of negotiability possessed by an instrument for the payment of money; also to relieve banks from liability for quantity and quality of shipments now imposed by Supreme Court decisions in Alabama, Mississippi and North Carolina.

2. Having defined an order bill of lading, and provided for the measure of negotiability appropriate to such instruments, to require the same to be issued upon a separate printed form.

3. To compel the carrier to require the surrender of the bill of lading before making the delivery of the property, and to provide a remedy for persons injured in case of default in this respect.

4. To make the carrier liable to holders of bills of lading issued by its agents, without the actual receipt of any property.

5. To prevent the destruction of bills of lading by their material alteration, and to allow the enforcement thereof according to their original tenor.

6. To prevent the carrier from making additional charge for transporting property under an order bill of lading, and thereby nullify the proposed law.

7. To make full and fair provision to protect the carrier from loss or liability in cases in which it would be inequitable to impose a loss upon him.

8. To leave carrier and shipper entirely free to make any arrangement they might see fit with reference to the carriage, custody or delivery of the property, provided only that any agreement inconsistent with the provisions above referred to must not be evidenced by the issue of an order bill of lading.

In this new draft, which is still under consideration, the fifth section of the old bill, holding the carrier responsible for bills of lading issued for stolen goods, has been omitted, as has been the provision contained in the original act, compelling the carrier to issue an order bill of lading upon request of the shipper; and also the tenth section of the original act, prescribing a form of bill of lading, thereby meeting two serious objections to the proposed legislation.

Present Situation

Subsequent to the introduction of the bill in Congress, the joint committee of carriers and shippers held a meeting in Chicago, and made considerable progress toward reaching a final agreement.

At the conclusion of the hearing before the House Committee of Congress, the chairman of the carriers' committee appeared and stated that their joint committee was soon to meet again, when it was possible they would reach a final agreement; should that occur it was probable they would invite the bankers to confer with them on the points in which bankers were interested, with an idea of having all points of agreement between the railroads, shippers and bankers embodied into one bill of lading to be enacted by Congress.

The joint committee has held that meeting and report progress, but are without final agreement, and another meeting is soon to occur; should they again fail to agree, the bankers' committee have requested they appoint a sub-committee, which shall take up with the bankers' committee the sections in which the banks are interested, so that progress may be obtained.

No one will dispute that the development and volume of banking loans on bills of lading has been due to the belief that the documents were safe collateral.

The increasing number of decisions causing losses are forcibly bringing to the attention of bankers the danger in continuing their loans on the present document, and cannot fail to correspondingly cripple the borrowing facilities of shippers, whose power of creating business, being thus handicapped, must surely keep from the railroads shipments that otherwise would be offered.

It is therefore readily seen that the interests of the shipper, the railroad and the banker are mutual, and in the order named would be most benefited by giving to bills of lading attributes that would make them reasonably safe collateral. Unless the shipper can offer proper security he is not in a position to borrow, and through inability to secure advances must necessarily do less business, while the railroad is thereby deprived of that amount of shipments. With the banker, however, the loss of opportunity to loan on any one security or in any one location can be readily replaced, as opportuni-

ties are never lacking for the investment of his funds on more or less favorable terms.

Few people realize how much the development of our country is due to the faith with which bankers in the past have looked upon bills of lading. They have afforded the small shipper an opportunity of turning his capital many, many times, placing him in a position to create shipment after shipment, benefiting the railroad as well as himself, and producing a quick market for the vast agricultural products of the country; and there can be no question but that a safe and proper bill of lading would in the future be the means of vast increased benefits.

While the amount that banks are now loaning on these documents is a vast sum, yet there are any number of bankers, particularly in the large cities, who never have and probably never will advance money on bills of lading until they have been properly safeguarded. Should this condition be brought about, hundreds of millions of additional capital would undoubtedly be available for the handling of an increased interstate commerce, through the medium of these documents.

The question is a large one, and its proper solution will not only affect but benefit many interests throughout this wonderful country of ours, and it certainly behooves us, as bankers, in the interests of all concerned, to do what we can in a fair, broad spirited manner to bring about conditions that shall make future bills of lading safe banking collateral.

Team Owners and Transportation Companies

BY JAMES L. BOWLBY

EX-PRESIDENT MASTER TEAMSTERS' ASSOCIATION, BOSTON.

(An Address Delivered at the Fifth Annual Convention of the Team Owners' Association of America in New York)

IT is not too much to say that the interests of the team owner and the railroad and steamship lines are very much allied, or should be. The team owner is the feeder and distributor for the transportation company, and it quite naturally follows that they have much in common. That the transportation companies are quickly affected by causes which keep teams from giving them freight or prevent them for any reason from hauling from the terminals has been demonstrated so many times that further comment on this line is unnecessary. That the position of the railroad or steamship company is often misunderstood, and therefore the object of much condemnation, is also a well known fact. Often much energy is lost in denouncing a transportation company, and when the cause of all the tempest is traced it is found to be the fault of some receiving clerk or delivery official.

Clerical Errors Cause Trouble

Misunderstanding or misinterpretation of rules by the clerical force frequently causes trouble and delay to the team owner, which by the higher officials may not have been so intended. In such cases the thing to do

is not to drive home cursing the transportation company, but to take the complaint to the agent, who in many cases is disposed, in order to facilitate the movement of freight to and from his terminals, to apply a remedy. If the agent has not the power to correct the grievance, there is always the opportunity to appeal to the general freight agent, traffic manager or president, if necessary.

Too often team owners rest their case with some foreman or chief clerk, and submit to that which works hardship, instead of going higher. We maintain that both team owners and transportation companies have rights, and when a rule is made by the companies which seems to put an unreasonable burden upon the team owner, the thing to do is for the team owner to discuss the case with the railroad officials. Experience has shown that the result is in many instances a relief from the burden or an explanation that makes the rule justifiable.

A well regulated freight office is an institution much appreciated by the team owner. There are some of this kind, but we shall not attempt to say how many.

We are hopeful that their number will be greatly increased, and that right soon.

The team owner does not profess to know the railroad business, but he knows right away whether the railroad agent has a good understanding of his business, for if he has a practical knowledge of how the work should be done it is sure to show itself in the way the local office is conducted. Team owners brush up against the local freight office force and freight cashier's office more than any other departments of the road, and when they find these two places run with sensible rules, clerks who give the patrons courteous treatment, and a system of handling the business with the least possible delay, they are quick to recognize the fact.

One of the most common causes of complaint by the team owner against the transportation company comes from the doing of things at random. To illustrate: In some offices a force of clerks make arrival notices—that is their job; that is what they are paid for. If it is carload freight they send out these arrival notices upon assumption that the car is located on a delivery, or, as some call it, on a team track. If it is house freight the arrival notices are sent by mail or messenger, with the assumption that the car is unloaded at a designated place and that the property described on the arrival notice is actually ready for delivery; but, as a matter of everyday experience, we have come to know that to receive a notice of the arrival of a carload does not mean that it is always accessible on a team track, or that a shipment of house freight is actually unloaded and ready for delivery. The random arrival notice is a source of much trouble. We maintain that this need not be so, and that before an arrival notice of a carload of merchandise is sent to a consignee it should be known by the clerk that it is actually accessible on a delivery track, and that in the matter of house freight the arrival notice should be retained until it is known that the property described thereon has been checked from car and is obtainable.

Team Owner Wants Freight Quickly

Occasionally it is said that this reasoning is fanciful, and that such a condition is impracticable, but the team owner believes that it is altogether feasible and practicable. He has seen it done, and what one railroad company can do and is doing another company can do likewise. Many transportation companies are conducting their business as it relates to the team owner at too long range.

The team owner believes that the transportation company should give him a chance to get his freight quickly when he comes for it, and that it should be taken from him without delay when he brings it to them. The conditions under which team owners are laboring in various cities is diversified, but we believe that the time has come when team owners will insist that the transportation company shall unload, sort and deliver its house freight to the team, as is now being done in several of the large cities. The team owner

should no more be called upon to dig for his freight among a mass of miscellaneous goods in a freight house than he should go into a storage warehouse or mercantile store and help himself, as he is now doing in the freight houses in many cities. The team owner believes it to be the transportation company's duty to provide help to do its own work and not call upon him to do it, and we know the sentiment is increasing among railroad men that changes more favorable to the team owner must come. The teaming trade should insist that the transportation company keep the streets of its terminals and those approaching thereto (if, as in some cases, they are responsible for them) in good condition. Instances can be cited where there is an utter disregard on the part of the transportation companies in this respect. One prominent railroad president said within three months that the policy heretofore pursued by his road had never been to lead; it had always waited to be driven, so it is that, if improved streets or better facilities are to be secured, united action on the part of the teaming interests is indispensable.

The need of reform in the matter of delays and lack of help and absence of proper facilities is not confined to the railroad companies. There are domestic and foreign lines in some cities where radical changes should be made and team owners should unite to bring the much needed results. No individual team owner can make so much of an impression upon the steamship lines as a team owners' association.

The team owner, while insisting that the transportation company should do its part, should conduct himself in all his dealings in a way that shall entitle him to the respect of the railroad or steamship officials, and when mutual confidence in each other's right intentions exists better conditions will come.

Being sure that the need exists, the slogan of the team owners in every city and town of the United States and Canada should be "Better Freight Facilities," and let us all work more energetically than ever to secure the much desired results.

In closing, and to be definite, the team owner, if he is to do his work at a profit, must, through his local organization, keep continually agitating for the abolition of the practice of doing the transportation company's work. Instead of working for the railroad and steamship companies, he should work for himself. The past year has witnessed an advance in this line in some cities. The year to come should show that the team owners have caused the abuse to be corrected in more of the large centres.

But the railroads will not change their methods while we submit passively to their unjust requirements. It is therefore imperative that we insist upon our rights. Let us not be backward in claiming what belongs to us.

Subscribers who do not receive their copies of FREIGHT promptly each month will oblige the publishers by acquainting them with that fact without delay.

BOOKS AND PERIODICALS

Rate Regulation of Gas and Electric Lighting. Lindsley. Banks Law Publishing Company.

This compact volume, while its title indicates that it deals only with the subject of gas and electric lighting, is nevertheless of value to the student of transportation. It contains much law upon the power of the Legislature to regulate rates, with the limitations on that power; the rules laid down by the courts as the test of reasonableness; the power of the courts to determine the reasonableness of legislature-made rates, and the restraint by the courts of legislature-made rates. Several of the more important cases are digested, but for what reason other important ones are omitted in the digest is not disclosed. One of the omitted cases is *C. N. O. & T. P. Ry. vs. Interstate Commerce Commission*, 167 U. S. 479. We think this and other cases, if digested and inserted in the book, would materially add to it, for they would assist the reader in determining what are the correct rules upon the subject, as shown by the decisions of the courts.

The United States in the Twentieth Century. Pierre Leroy-Beaulieu. Translation by Bruce. Funk & Wagnalls.

But two methods serve to give one a proper perspective of his country; one is the lapse of time, when the various events, unshadowed by patriotism or bias, assume their proper proportions; the other is less satisfactory, but has the advantage of showing one a mirror in which the country is reflected—we refer to the impressions of a foreigner. Such a work is the one before us. The author treats of this country in its rural, industrial and commercial aspects. As the author states that the book "is based on a study of American documents, * * * dealing with facts * * * an inventory of the economic resources of the United States," one may imagine that it is largely statistical in its make up. It is. But the author has refrained from inserting any more tabulations than necessary, which adds to the pleasure of reading about one's self. It is to be regretted that the author did not give more of his opinions, if he had any, of our economic and commercial achievements.

Modern Industrial Progress. Cochrane. Lippincott.

If one desire to know the advances which have been made in industrial life, whether in transportation by electricity, by steam, by gasoline engine, on the earth or water or through the air, or desire to know the process by which the articles are used, either directly or indirectly, in the civilized world today, he can do no better than to peruse this volume. Its 600 hundred and odd pages are filled with description of all sorts of mechanical appliances for the accomplishment of various purposes. "It goes without saying that this book is not a complete record of the world's industrial progress, because in the nature of things a single volume does not afford the space for so vast a record. It is only possible to select some of the more important industries and to point out the strides by which they

have advanced to their present proportions." This declaration from the preface is modest in comparison with the actual work accomplished by the author.

The Speculations of John Steele. Barr. Stokes Company.

This volume smacks much of the style which the subject of the story is said to have dictated to his stenographer. "A novel of everyday business life, let us say, like one of those that have been so successful lately—a book pulsating with greed of gold and all that sort of thing, you know. Unscrupulous means, and perhaps an adventuress here and there of perfectly stunning beauty" (page 261). The deals and actions of Steele are much overdrawn, and equally overdrawn are the suggested persecutions by the trust, under the name of its owner, Berrington; equally overdrawn are the love affairs of Steele, for he proposes matrimony to the first woman on very short acquaintance, to the second on the occasion of the second interview, and to the third before an opportunity to really prove his identity has been afforded; but she, the daughter of the reputed owner of the trust, accepts him.

The strife for control of a few miles of railway, which gives to the owners a strategic position, presents to the hero his first opportunity and plays no unimportant part in his life.

The book is really worth reading, but it would be more valuable if kept within the lines of probability.

Thirtieth Annual Report Railroad Warehouse Commission of Missouri.

This book covers the operations of the railroads in Missouri, showing the capital stock, taxation, result of inspection, mileage operated in the State, together with other useful information. It also contains the rules and regulations applying on State traffic, including classification of same. The railroad laws, revision 1889, and supplemental acts will be of value to those who desire to know the law of the particular State and for the purpose of comparison with other laws. The subject of grain inspection and weighing under the warehouse department gives the grades of grain and the method of weighing.

The Scarlet Empire. Parry. Bobbs-Merrill Company.

This book is by one who, in it, says: "The labor of writing is a wearying task to one who is long past his prime and seeks only comfort and leisure for the days that yet remain." (p. 396). It is a book by an individualist, in which he portrays his ideas of the socialist state. The story is that of one rescued from a watery suicidal grave by an inhabitant of Atlantis. While a love story runs through it, the purpose of the book is to indicate that the true socialistic state is made up of "poor miserable dupes of the beautiful dream of socialism, who never knew the pride of possession, the glory of attainment, the sharpening of wits against wits, the joy of true friendship or the tender yearnings of love, who are clamped as in a vise in one unending dreary, damnable round; wretched slaves in a mighty treadmill." (p. 264).

BEFORE THE INTERSTATE COMMERCE COMMISSION

HEARINGS HELD

- June 1, 1906, Washington, D. C.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.
- June 5-8, 1906, Philadelphia, Pa.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.
- June 11, 1906, Washington, D. C.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.
- June 12-14, 1906, Philadelphia, Pa.—In the matter of the relation of common carriers subject to the act to Regulate Commerce to coal and oil and the transportation thereof.
- June 14, 1906, Cleveland, Ohio.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.
- June 19-22, 1906, Washington, D. C.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.

The Coal and Oil Investigation

The investigation into the relations existing between the various railroad companies and shippers of coal and oil, ordered by Congress in joint resolution approved March 7, 1906, has been continued by the Commission during the past month, and hearings have been held in Philadelphia, Cleveland and Washington. The hearing at Cleveland related to the transportation of oil, while the hearings at Washington and Philadelphia continued the inquiry into the methods of the so called soft coal roads.

The hearing at Cleveland on June 14 was ordered to enable the Standard Oil Company to offer testimony to rebut that given by independent oil dealers. At the hearing, however, Vergil P. Kline, counsel for the Standard Oil Company, stated that his company had decided to offer no rebuttal testimony, and the only witness called was M. C. Tully, auditor of freight receipts of the Lake Shore & Michigan Southern Railway Company. Mr. Tully, after a lengthy examination, admitted that certain warehouse charges against the Standard Oil Company were not paid by that company; that this practice had been going on at the Chicago station from 1903 to 1906, and that it was in effect a rebate to the Standard Oil Company amounting to at least \$500 per month.

The Coal Hearings

The inquiry into the bituminous coal situation was continued at Philadelphia on June 5, 6, 7 and 8. A

number of officials and employes of the New York Central & Hudson River Railroad Company were called to testify, and each one emphatically declared that he neither owned any stock in any coal or oil company nor knew of any person connected with the road who did.

Edward V. W. Rossiter, a vice president of the New York Central, testified that the New York Central owned 5,000 shares of the common stock and \$500,000 of the bonds of the Pennsylvania Coal & Coke Company. The stock came, he said, from previous ownership of 5,000 shares of the Beech Creek Coal & Coke Company. The latter company was merged in the Pennsylvania Coal & Coke Company, and a copy of an agreement was exhibited to show how the New York Central came in possession of the original block of Beech Creek stock. This agreement, which was entered into on January 17, 1901, was made for twenty-five years. Under it the Beech Creek Coal & Coke Company, owners and lessees of large tracts of coal lands in the Clearfield district in Pennsylvania along and near the leased lines of the New York Central, agreed to ship at least 1,000,000 tons of coal yearly over these lines. The Central agreed to keep the coal company supplied with sufficient cars to carry on its business, in consideration of which the block of stock was donated to the railroad company.

During this hearing Joseph B. Boyer, chief clerk to the chief of motive power of the Pennsylvania Railroad at Altoona, was called to the stand. It appeared from his testimony that five coal companies selling fuel coal to the Pennsylvania have been for a number of years sharing their profits with him. He testified under oath that payments to him on this account have amounted since 1902 to \$46,479.55. From three companies he received 5 cents a ton on locomotive coal, from another 4 cents, and from the fifth 3 cents per ton. From Captain Hicks, whose companies also sell fuel to the railroads, Boyer had been getting checks ranging from \$100 to \$225 per month, as dividends on certain coal stocks which came to him as gifts from Captain Hicks. Boyer had also received as gifts about 950 shares of dividend paying coal stock. He said that before he started out on his career in accepting gifts of coal stocks and other bribes for the use of his position he had refused a number of offers from different persons, as he wanted time to think the proposition over.

"How long did you wrestle with your conscience?" asked Commissioner Clements.

"Not very long. I decided it was clean money, and that they could afford to pay it."

On the day following the giving of this testimony an order was issued by President Cassatt dismissing Mr. Boyer from the service of the Pennsylvania Railroad Company.

R. F. Large, coal freight agent of the Pennsylvania Railroad Company, attempted to explain the reason

why the cars of the Berwind-White Company were not weighed during the season of 1902-3, when there was considerable congestion in traffic on account of the anthracite coal strike. Mr. Large explained that the weighing and classification of freight was suspended not only in the interest of the railroad, which was anxious to keep its cars moving, but for the benefit of all shippers and the community at large. But, in answer to a question of counsel, he admitted that the exception was made only in the case of the Berwind-White Coal Company.

At the Philadelphia hearing of June 7, James McCrea, vice president in charge of the Pennsylvania lines west of Pittsburgh, offered some interesting testimony. Mr. McCrea explained that, under the bylaws of the Baltimore & Ohio Railroad Company, the executive committee possesses all the powers of the board of directors. This committee consists of six members, four of whom are Pennsylvania Railroad officials. The executive committee of the Baltimore & Ohio Railroad as now made up, Mr. McCrea said, consists of Oscar G. Murray, George F. Randolph, John P. Green, Samuel Rea, John B. Thayer and James McCrea.

Speaking of rebates, Mr. McCrea did not claim that the rebate system had been entirely eradicated, but testified that since June, 1899, the concerted effort has been to break up the practice, and that "rebates have practically ceased to exist." He said that it is difficult to wipe out such a long standing, deep rooted system, but that he believes the anti-rebate law is today as closely observed as any other law on the statute books. Mr. McCrea practically admitted that the pecuniary interest of the railroad companies, under the community of interest plan, had been the potent factor in abolishing the rebate system to the extent that it had been abolished.

"After you had acquired these stock interests and had the power to control the other lines, there was no pecuniary interest in giving rebates?" inquired counsel for the Commission.

"No, sir; none."

"But it was of direct pecuniary interest to the railroads to observe published tariff rates?"

"Yes, sir."

Mr. McCrea denied the ownership of any gift stock in coal or oil companies, and asserted his conviction that "no railroad officer should be interested in any coal or other enterprise where his official and personal interests might clash." He expressed the belief that on the Pennsylvania lines west of Pittsburgh the shocking conditions shown in the Pennsylvania Railroad proper do not exist.

William W. Patterson, who manages two large independent anthracite operations, testified that the "square deal" policy is carried out on the Philadelphia & Reading Railway so perfectly that all shippers are satisfied. The witness declared not only that the Reading supplies all independent operators on its lines with ample cars, but that its policy is to encourage development of coal properties.

The testimony of Joseph K. Aiken revealed another instance of a normal salaried employe of the Pennsylvania Railroad Company reaping riches in a short time. Aiken is chief clerk to Superintendent Mitchell, of the Monongahela Division. Like many of his predecessors on the witness stand, Aiken received checks for \$50 from time to time from Captain Hicks. Aiken testified to owning 1,360 shares of stock in coal properties, but said that he came by all of it honestly. According to his testimony, he paid for the greater part of it, and the rest he obtained by legitimate services, mostly through assistance in incorporating some of the companies. But what created suspicion in the minds of the Commission and counsel was how Aiken secured the necessary money to purchase these stocks, worth \$50,000 at the least, on a salary ranging from \$50 to \$125 a month.

"Do you mean to tell me," asked counsel, "that you saved that amount of money out of your salary?"

"I got it through thrift and judicious investments," was the reply.

One of the companies in which Aiken was interested—in fact, he was a director in that particular company—supplied fuel to the railroad which employed him as a clerk. He was one of those persons who paid 5 cents a ton commission to Joseph Boyer, the man who was dismissed from the Pennsylvania service about the time the witness was telling the Commission of these payments. The company which he represented when he gave Boyer these commissions was the Dunkirk Coal Company.

"Why did you give Boyer 5 cents a ton for the coal sold by your company to the Pennsylvania Railroad Company?" asked counsel.

"I treated Boyer just as I would treat a broker. I gave him a commission. In return I expected to get railroad orders for my company."

"Why did you pay 5 cents?"

"That was a recognized commission."

One other witness of the day whose testimony was important was G. O. Potter, an independent coal operator, whose mines are located on the Alexandria branch of the Pennsylvania Railroad. He declared that, if the policy of the railroad company in the distribution of coal cars among independent shippers is continued, every small coal dealer will be forced into bankruptcy. Mr. Potter said that his company's mines had a daily capacity equal to that of both the Salem and the Keystone Company, yet each of the latter companies got three times the rating of his company by the railroad in its allotment of cars. Mr. Potter said:

"The capacity of our mines has ranged from 1,000 tons in 1900 to 2,500 tons at the present time. The railroad has rated us at 500 tons a day, but recently, because of the pressure brought by us, has increased it to 925 cars a day."

Mr. Potter said that the railroad did not base its rating on the capacity of a mine, but on the shipments made during the previous year, and, as he could not get cars, he saw no chance of his rating ever being in-

creased. Asked if he had any private cars, he said he had tried to put them on, but the railroad would not allow him to put on less than 500, which would have cost \$600,000, and this he could not afford.

At the hearing on June 8, the leading witness was M. Riebenack, comptroller of the Pennsylvania Railroad Company. Mr. Riebenack's testimony showed that the Pennsylvania Railroad Company is largely interested in bituminous coal properties on its lines, holding coal lands in three counties through a subsidiary real estate company. This information is in direct variance with the statement issued by President Cassatt on February 14 of this year, which said that "neither the Pennsylvania Railroad Company, nor myself individually, own or have any interest in any bituminous coal mine." Mr. Riebenack presented a statement showing in detail a list of coal lands owned by the Manor Real Estate & Trust Company. He testified that the entire capital stock of this concern, \$2,000,000, is owned by the Pennsylvania Railroad Company. From this statement it appeared that the company owns outright 7,771 acres of bituminous coal lands. These are located in Westmoreland, Blair and Cambria counties, in Pennsylvania.

The hearings held at Philadelphia on June 12, 13 and 14 were largely devoted to an effort to disclose the relations existing between the Pennsylvania Railroad Company and the Berwind-White Coal Company, which is alleged by the independent operators to have been favored in many ways by the Pennsylvania. John E. Berwind testified that the Pennsylvania Railroad Company had done what it could to aid the Berwind-White Company in building up the steamship coal business at New York. This business, he said, is "very sensitive," and that to do it properly and avoid delays the arrangement for the Harsimus pier had been made.

Mr. Heebner, of the Berwind-White Company, filed a statement showing the cost of the Harsimus pier for 1905 to have been \$116,006.41. To that amount was added arbitrarily \$60,000 for additional cost of operating the pier because of insufficient car supply and delay in putting cars on the pier, necessitating frequent sending out of barges partly laden. The allowance made by the railroad company to the coal company for services performed in handling the cars on this pier is 7 cents per ton. On the 2,500,000 tons of coal handled each year at Harsimus pier this allowance would figure out \$175,000, so that over all actual expenses of the pier the Berwinds apparently have a profit, out of the allowance made by the railroad company, of about \$59,000 per annum.

At Washington, on June 19, E. J. Berwind, president of the Berwind-White Coal Company, testified. Defending his case and meeting the several points which have been urged against his company, Mr. Berwind did not spare the Pennsylvania Railroad. Under oath Mr. Berwind denied positively and with great earnestness that the Berwind-White Company is now, or has been, favored by the Pennsylvania Railroad Company. He admitted that while rebates were in

vogue, prior to 1900, his shipments had the advantage, but declared that his company has never received anything like adequate transportation facilities. He denied that his concern was favored above others with cars during the boom period in the bituminous coal trade attendant upon the anthracite coal strike. He stated that at the time of the anthracite coal strike adequate shipping facilities not being afforded for the Berwind-White coal traffic, he exerted pressure to get cars, and, not being able to arrange for early deliveries, got the Pennsylvania Railroad to turn over 1,000 new cars, for which he paid \$1,187 each, "the highest price on record."

"The Berwind-White Coal Mining Company," said Mr. Berwind, "never got cars to within 500,000 or 1,000,000 tons of its business. As to the other shippers, I can only say that they have always had coal at tide and offered it to my customers and to me when I had no coal and had to buy it to fill contracts. For years the Pennsylvania Railroad has never been able to give us the cars required. We built private cars and for ten years ran them at large loss, but did this to insure coal to a certain amount each day."

"When rebates were given, I suppose the Berwind-White Company got them?"

"Yes, sir, we got rebates. But if prices at which some of our competitors offered coal was an indication of rebates paid, we never got the lowest net rate."

"Did your company ever divide those rebates with anybody in the Pennsylvania Railroad?"

"With nobody," answered Mr. Berwind. "Neither directly, indirectly nor by any device. I want to make that clear and certain."

At the Washington hearing of June 21, Frank Hoff, chief accountant in the general manager's office of the Pennsylvania Railroad, admitted that he had accepted stock from a coal company doing business on the Pennsylvania lines, but said that he had returned the stock since the recent investigation had been inaugurated.

John B. Thayer, fourth vice president of the Pennsylvania Railroad Company, appeared before the Commission at this hearing. On being asked by Commissioner Clements if suspicion was not always aroused when there was a shortage of cars by the fact that the railroads were financially interested in the coal companies, and that therefore there should be no such ownership, Mr. Thayer expressed himself as having no hesitation in saying that in the future there should be no ownership by railroads of stock in coal companies, and that, as a general proposition, he thought the time had come when transportation companies should confine themselves to the transportation business and nothing else.

Mr. Thayer entered into an elaborate explanation of the result of the investigation by his company of private cars. He said that prior to sailing for Europe in May last, President Cassatt gave orders for the discontinuance of the individual car system on the Pennsylvania road, and had been provoked because the

subordinate officials did not feel able, in operating the traffic department, to carry out that policy. He said that Vice President Pugh and himself took the responsibility of suspending the order, assigning as a reason that they were more directly in touch with the burdens of that business.

"We felt," said Mr. Thayer, "that in justice to those men who have placed their money in the individual cars, and perhaps in justice to a large portion of the consuming public, we ought to go through this next winter. We all hope that our experience will prove that we will at least be able to accommodate our traffic to a large extent by our own cars."

Mr. Thayer said it was not true that during the coal famine cars were denied to certain operators while they were supplied to others, as had been alleged at previous hearings. There were, however, at that time, he said, a number of shippers who were desirous of making shipments for speculative purposes, and that they were left out of the railroad company's calculations because they wished to ship the coal at high prices and force it on the consumers, and that preference was given to operators who had contracts.

On June 12 the Commission issued a circular letter, a copy of which was sent to each operating road in the United States, calling upon it to furnish the following information to aid the Commission in conducting this investigation:

1. A list or statement showing the names and location of all coal mines upon lines of road owned or operated by your company, giving the rating of each such coal mine for car distribution when car distribution is made upon a basis involving the rating of mines. This statement should be accompanied by a sample of the daily car distribution sheet and an explanation of your car distribution system.
2. A list or statement showing the location and extent of all oil lands along or tributary to lines of road owned or operated by your company. This statement should also show the names, locations, operators and proprietors of all oil operations and refineries located upon or along the said lines of road.
3. A list of the names of your stockholders and their respective holdings on March 1, 1906, or at the last date prior thereto when the stock books were closed, specifying such date, and including the postoffice address of each stockholder if that will not occasion substantial delay in complying with this request. In cases where the last dividend was paid to persons not stockholders of record, give the names and post-office addresses of such persons.
4. A list of the names of stockholders present in person at your last annual meeting and a list of the names of stockholders voting thereat by proxy, together with the names of the persons acting as proxy at such meeting, and a blank form of the proxy used.
5. A map or maps of the lines of railroad owned or operated by your company.
6. A map or maps of the coal territories served by the lines of railroad owned or operated by your company, showing the location upon such lines of each coal mine from which coal is offered for shipment, and a map or maps furnishing similar information concerning the oil lands hereinbefore mentioned.
7. A statement showing in detail what stocks or bonds, if any, owned by your company, and stated in detail upon your last annual report to this Commission (made as of June

30, 1905,) have been parted with by your company since said date.

8. A statement showing in detail what stocks or bonds, if any, have been acquired by your company since said date.

9. A statement showing in detail what stocks or bonds owned by your company, if any, which are not mentioned in detail in said report or in the answers to the above two questions, and in what other obligations of other companies your company has any interest, direct or indirect, legal or equitable, including in your answers all stocks or bonds held by any other person or corporation, wholly or partly for your benefit, as trustee, agent, pledgee, or in any other wise whatever, and showing in detail the nature and extent of your interest, and the time when, and the mode in which, the said interest was acquired.

10. A statement showing the exact corporate name, and the name, title, and postoffice address of the principal officer of each and every corporation which is either directly or indirectly in any wise controlled by your company, showing in detail the mode of control and the date upon which, and the way in which, said control was acquired.

11. The name and the postoffice address of the person or corporation, if any, who, or which, in any wise, either directly or indirectly, controls your company, stating in detail the mode of control and the date upon which, and the manner in which, said control was acquired. If the control mentioned in this paragraph is held by a corporation, state also the name and postoffice address of the principal officer of such corporation.

12. A statement showing all coal deposits, collieries, coal-bearing lands, and all other coal properties which your company owned or controlled on January 1, 1906, or in which it then had any interest, by way of equitable title, or of lien, or of contract to purchase, or of option to purchase, or otherwise, showing in detail the location, size, and value of each of such properties, and the nature and extent of your interest, and the time when, and the mode in which, the said interest was acquired; also all changes in this regard since January 1, 1906.

13. A statement showing all oil deposits, oil lands, oil wells, and all other oil properties, which your company owned or controlled on January 1, 1906, or in which it then had any interest, by way of equitable title, or of lien, or of contract to purchase, or option to purchase, or otherwise, showing in detail the location, size, and value of each of such properties, the nature and extent of your interest, and the time when, and the mode in which, the said interest was acquired; also all changes in this regard since January 1, 1906.

14. A list of all corporations which are in any manner, directly or indirectly, interested in coal deposits, collieries, coal-bearing lands, or other coal properties, oil deposits, oil wells, oil-bearing lands, or other oil properties, in which corporations your company has any interest less than control, whether said interest be legal or equitable, stating in full the character and extent of your interest on January 1, 1906, and also at the date of the report hereby called for.

15. The names and addresses of all the officers of your company, including all subordinate as well as all general officers.

16. A statement showing the name and address, and the character and extent of the duties, of each and every person charged in any way with the duty of distributing to shippers cars operated by you in the transportation of coal or oil.

17. A statement showing for the year ended June 30, 1905, or for the year ended December 31, 1905, as may be more convenient, the different kinds of lubricating oils purchased by your company, the amount purchased of each kind, the sum paid for each such amount, the persons, companies, or corporations from whom each such amount was purchased.

giving the amount from each and the sum paid therefor, and the names of all persons involved as agents in each such purchase and sale.

Rebates to Packers on Export Shipments

At Kansas City, on June 13, in the United States District Court, the firms of Armour & Co., Swift & Co., Cudahy & Co. and the Nelson Morris Packing Company were found guilty, on four counts of the indictment, of accepting rebates from the published tariff rates from the Chicago, Burlington & Quincy Railway Company on export shipments of packing house products, and the Burlington Railway Company was found guilty of granting such rebates to the above named firms. The penalty for such violation of the Elkins law is not less than \$1,000 nor more than \$20,000. On June 22, after denial of defendants' motion for a new trial, the court imposed a sentence of \$15,000 each upon the railroad company and the four packing companies, or an aggregate for the five defendants of \$75,000.

This case is one of peculiar interest, as being the first in which the Government has proceeded in the courts against carriers and shippers charged with granting and accepting rebates on export shipments.

In the indictments returned last December, the Burlington Railway Company was charged with granting concessions to the packers on shipments from their Kansas City plants to New York for export, and the Packers with accepting such concessions. For trial purposes the cases were consolidated and one specific case considered, practically identical with the others, charging Cudahy & Co. with accepting a rate of 23 cents per hundred pounds on a shipment of lard to New York for export to Germany, while the legal tariff then on file with the Interstate Commerce Commission named a rate of 35 cents.

While the case was on trial the defendants filed a demurrer to the indictment. This demurrer was overruled by the court in a written opinion, in which the court deals with the question of the application of the provisions of the act to regulate commerce to export rates. Upon this interesting and much mooted question the opinion of the court is in part as follows:

In this discussion the important fact must at all times be kept in mind that this is a case only having to do with exports to foreign countries beyond the seas. Imports are not involved. And exports with Canada or Mexico or any other American country are not involved.

The "adjacent foreign country" referred to in the commerce statutes of Congress is of no concern in the decision now to be made. But the commerce in question is that carried by one or more lines of railroad from within a State not adjacent to the seaboard port, and there put on a vessel to be delivered at a port across the seas. That and that only is the subject matter of this indictment.

One question is whether Congress can legislate

upon the subject, and the other question is, Has Congress undertaken to legislate upon the subject?

It is a curious fact that for nineteen years the one statute has been in force the one feature thereof just referred to has not been before any court or judge, appellate or on the circuit. This probably cannot be said of any other general statute ever enacted by Congress, remaining in force that length of time.

An appellate court cannot, and much stronger the reason that a trial judge must not, decide a statute as being beyond the powers of Congress, unless beyond all reasonable doubt unconstitutional. It, therefore, is not within the prerogative of this court to say that legislation as to the exports would not be valid, unless it is most clearly the duty of this court to so declare.

While the broad question in all its phases was not before the courts, it was said by Chief Justice Marshall, in the great Fulton steamboat case of *Gibbons v. Ogden*, that the commerce clause of the Constitution "comprehended every species of commercial intercourse between the United States and foreign nations." Statements similar to those made by Chief Justice Marshall have been so frequently made by jurists and statesmen that they are now almost or quite uniformly accepted as correctly made.

As to matters of general concern, it is conceded that, until Congress legislates, commerce is free. This being so, the question is whether the commerce act of 1887 or the Elkins law of 1903 imposes a penalty for a failure to publish or post a railway tariff, or to observe the same if filed, as to charges on merchandise exported from Kansas City to Liverpool or other foreign ports, in so far as that distance is covered by rail, viz., from Kansas City to New York city. While the facts do not appear from the indictment, it is said that the shipments complained of were through shipments, covered by one bill of lading for the entire distance from Kansas City to the foreign port. And whether the two acts of Congress do cover such a shipment is said to be at least doubtful, and that the defendant should have the benefit of a doubt as to a matter of law as well as of fact. Language is borrowed from Justice Blatchford, in *United States v. Brewer* (139 U. S. 278), where it is said: "Laws which create crime ought to be so explicit that all men subject to their penalties may know what act it is their duty to avoid." The soundness of this view cannot be denied.

But the question is whether a doubt arises as to the meaning of these statutes. It is claimed that there is a doubt as to whether the statutes in question make the acts complained of a crime because of the following:

December 14, 1905, the Interstate Commerce Commission made its report to Congress and said, on page 8: "It has always been a mooted question whether the present act requires carriers to file and maintain tariffs under which they transport imports and exports to and from the port of export and of entry."

Whether the Interstate Commerce Commission, as

evidenced by the use of the language quoted, was in doubt, I shall not discuss. It had a number of times decided that the statutes covered exports and imports. It did not say in its report of last December that the Commission was in doubt, but that it was a mooted question. But, conceding that it was in doubt when it announced the conclusion that it would not seek to enforce this phase of the law until Congress had the time to adopt amendments, it is a matter which does not go to the construction of the statutes, but is only a matter as to the amount of punishment, if the law has been violated, coming as it does from the officers required to enforce the law. But the fact that it is a mooted question is in no sense important as to the meaning of the statutes. Mooted questions are not usually doubtful to the court passing thereon. The monopoly conferred upon Fulton and his associates by a State was not in doubt by Chancellor Kent nor by Chief Justice Marshall, but their views were wholly different, as appear from the report of *Gibbons v. Ogden*.

The Commission had several times held that there was no doubt, and reaffirmed that conclusion in the report in question. It is true the Commission pointed out possible or probable injuries to people of this Government by enforcing the statutes, and for themselves said they would not enforce it until Congress was given an opportunity to act, and then recommended legislation to the effect that the Commission should be empowered to suspend the statute as to exports and imports.

Whether the enforcement of the statute, if it does apply, and the amendments making it apply, if it does not now, will be harmful to the cattle and cotton and other industries of this country is a question for Congress and not for the courts. If the statute applies and is enforced, then, if harmful, it may be assumed that it will be repealed; and if the Commission should not be given power to suspend or enforce a statute at their pleasure, it is an argument to be considered elsewhere.

The fact that December 14 last the Commission decided to suspend action under the phase of the statute in question, and the very next day this indictment was returned, is no reason why the court must or should bring the prosecution to an end by holding the indictment vulnerable to a demurrer.

If doubt arises as to whether the statutes make the acts complained of a crime, it must be so because of the recitals of the statutes, and they are now to be considered. Section 1 defines what carriers shall be subjected to the act:

1. When the property is carried wholly by railroad.
2. When carried partly by railroad and partly by water; when both are used under a common control, management or arrangement for a continuous carriage or shipment.

The same section defines the kind of commerce which is covered by the act:

1. Between the States; that is to say, interstate commerce.

2. Between the United States and an adjacent country; i. e., Canada or Mexico.

3. Between places in the United States and passing through another country.

4. From a foreign country to within the United States.

5. From the United States to a foreign country.

It is said to be a fact, and I assume it to be true, that the ocean rates vary from day to day, and sometimes hourly, for the reason that sometimes vessels are in need of freight for ballast, sometimes fully loaded and sometimes have some space to sell. And it is said to be a fact that of a load of a freight train delivered at the wharf, some will be carried across the ocean at one price and the balance at half that price.

If that be wholly, or only partly, true, then it follows that the railway cannot by a published tariff proclaim the rate from Kansas City to Liverpool, because the rate of today would not be the rate of tomorrow. All the railway could do would be to proclaim the rate to be so much, plus the ocean rate; and on such information it would only be guesswork what the rate would be.

It must be remembered that the statute forbids the lowering of the rates, except on three days' notice, and raising the rates, except on ten days' notice.

But the question is not whether the railroad carriers are allowed to make contracts with the ship-owners with or without a through bill of lading, and with or without fixed through rates. Nor is it a question of the railway charging less for meat and other products for export from Kansas City to New York than carrying like products to New York for consumption there. That question was put at rest by the Supreme Court in the *Texas Pacific Railway* case, unless a different principle must govern in carrying from Kansas City to New York than when carried from New York to Kansas City, or from New Orleans to San Francisco.

In the *Texas Pacific* case the merchandise could have been taken to San Francisco from the foreign port by water. But it was preferred to have it go by vessel to New Orleans and then by railroad to San Francisco, and it was so carried at a much less rate than was charged for freight of like kind and classification originating at New Orleans and carried to San Francisco.

For making this difference in rates the Interstate Commerce Commission complained by a bill in equity in a United States Circuit Court; and that court sustained the Commission, and the decree was affirmed by the Circuit Court of Appeals, but was reversed by the Supreme Court by a majority of six to three, the Supreme Court holding that the railway had the right to thus compete with the route by water, and probably to compete generally as to imports.

In the case at bar there is no competition by water from Kansas City to a seaboard port. Independent inland water carriers are not included within the statute, and of course ocean carriers are not within the

statute; but it is clear that carriers by railways and water inland, when acting under a common arrangement, are covered by the statutes as well as commerce by such method with an adjacent foreign country as well as from one point in this country to another point in this country passing through an adjacent country. And as to interstate commerce, it is included.

These are specifically enumerated, and because of this specific enumeration it is stoutly contended that all others are excluded from the statutes. Conceding the force of this elementary, fundamental and recognized rule of construction, there, in my opinion, is the error of the entire argument of defendants' counsel.

Congress did not enumerate the ocean commerce, because it would have been frivolous and empty words to have made the statute so read. The import case was not of or concerning the ocean rates from Europe to New Orleans, but was with reference to imports at once carried forward from New Orleans to San Francisco by rail. And applying the holding of that case to the one at bar, why should the statutes not cover exports from Kansas City to New York City, even though the purpose is evidenced by contract by a single and through bill of lading, and the purpose is to at once place the product on an ocean vessel destined to a European port?

I am not able to see an answer to that statement. I do not say that the rates to New York City necessarily must be the same, whether for use or sale there or for export. That is one question, but it is a very different question as to posting and filing and observing railway tariff rates.

It is apparent to many, and the Commission so recognizes, that by many it is believed that to bring all export shipments under this statute will work injury to the Pacific Coast and to the South in exports of cotton, and that the same is true as to the grain growing and cattle raising industry of the West is no doubt true. But, as already said, that is a matter for legislation, and not construction.

If it be said that the right of contract in preventing a through shipment and to contract therefor is denied, the answer is that no one provision of the Constitution must be subordinated to another. And full force and effect can be given to both by enforcing the statute on shipments to New York and then transferring the merchandise to the vessels, when it, of course, passes from under the statute. And it seems to me that when this is done it can be under an established rate, proclaimed by a published and posted tariff rate.

This, to me, a difficult question as to transportation, has received much consideration, and leads me to the conclusion that the demurrer must be overruled, as the indictment covers an offense.

Every issue of FREIGHT contains exclusive information of exceeding value to shippers; \$3 a year.

Imprisonment for Rebaters

In the June issue of FREIGHT some account was given of the trial and conviction of George L. Thomas and L. B. Taggart, who, on May 23, were found guilty in the United States District Court at Kansas City of conspiracy, under Section 5440 of the Revised Statutes, to violate the Elkins law by receiving rebates. At the close of the trial Judge McPherson suspended sentence upon Thomas and Taggart pending their motion for a new trial. On June 22 motion for a new trial having been denied, the court sentenced Thomas to serve six months in jail and pay a fine of \$6,000, and Taggart to serve three months in jail and pay a fine of \$4,000. Appeals have been taken.

Limitations Upon Action for Damages

The Circuit Court of Appeals for the Fifth Circuit, in its recent decision in the case of Carter v. New Orleans & Northeastern Railroad Company, has apparently settled the heretofore perplexing question as to whether or not the statute of limitations of the State in which an action is brought is applicable to a suit for damages under the act to regulate commerce. In this case, in which damages were claimed by the plaintiff because of violation by the railroad company of section 2 of the act to regulate commerce, the defendant in the trial court entered a plea to the statute of limitations, alleging that as the cause of action did not accrue within one year next preceding the bringing of said action, it was barred by the statute of limitations of one year; under Section 2741 of the Annotated Code of Mississippi. Upon demurrer to the plea of the statute being overruled by the Circuit Court, the plaintiff failed to plead further, judgment was rendered in favor of the defendant railroad company, and the suit dismissed. Thereupon the plaintiff sued out a writ of error to the Circuit Court of Appeals.

The Circuit Court of Appeals held that Section 2741 of the Annotated Code of Mississippi, providing that actions to recover a forfeiture or penalty on a penal statute shall be brought within one year, had no application to an action in a Federal Court against a common carrier to recover damages for discrimination in violation of the act to regulate commerce, which provides that for a violation of the provisions of the act the carrier shall be liable to the persons injured for the full amount of damages sustained, and a reasonable counsel or attorney's fee.

The Court of Appeals holds that such an action is governed by Section 1047 of the Revised Statutes of the United States, providing that no suit or prosecution for any penalty or forfeiture accruing under the laws of the United States shall be maintained, except as otherwise specially provided, unless commenced within five years from the time when the cause of action accrued.

Meaning of Classifications

An important decision, bearing upon the construction to be placed upon freight classifications, has recently been rendered by the Supreme Court of North Dakota in the case of *Smith et al. v. Great Northern Railway Company*. The court holds that common carriers, having adopted classification sheets fixing transportation charges, and having filed the same with the Interstate Commerce Commission, are, as well as shippers, bound thereby; and contracts between such carriers and shippers are presumed to be governed by the classification sheet in force at the date of shipment; and that in construing such classification sheets, the intention of the framers thereof, when such intention can be ascertained, should be given effect regardless of the intention of the shipper or of local usages and customs relating to the meaning of terms contained therein.

The case was appealed from the judgment of the district court of Cass County in favor of the defendant railway company, holding that it is entitled to the possession of certain personal property consisting of seventy-six bales of burlap horse covers, or, in the event the delivery of the possession thereof cannot be had, then that defendant have judgment against plaintiff for the value of its special property therein as a common carrier, together with its costs and disbursements. The plaintiff was the consignee of the said goods, which were transported from Philadelphia, Pa., to Fargo, N. D., over the lines of the Great Northern Railway Company and connecting lines. The goods were billed by the railroad company as first class freight, and it being the contention of the consignee that they should be transported as third class freight they tendered a sum sufficient to cover the charges at the latter rate and demanded possession of the property. The tender and demand were refused, and action was commenced to recover possession of the property. The case was tried before a jury, and at the close of the testimony the district court directed a verdict in favor of the railroad company, and judgment was entered upon such verdict. This was the only error assigned, and the sole dispute between the parties was as to the proper classification, under the schedule of rates, of the goods in question, the plaintiff contending that they should be charged for on the basis of third class freight, while the defendant contended that they were properly billed as first class freight. The following is an abstract of the opinion of the court:

If plaintiff's contention is sound, then the tender of the charges on the basis of third class freight operated to discharge the lien of the common carrier, and plaintiff would be entitled to recover the possession of the property or its value; but, on the contrary, if defendant is correct in its contention, then it is entitled to hold the property under its lien until the proper freight charges are paid or tendered. The controversy, therefore, turns upon the question as to the proper classification of the shipment in question ac-

cording to the schedule of freight rates in force at the date of the shipment, which was in 1903; and there being no conflict in the evidence as to the nature of the goods shipped or as to any question of fact, the controversy is one of law, and involves a proper construction of the rate schedule or classification sheet in force at the date of such shipment. What the schedule or sheet may have provided for at any other date, either prior or subsequent, is wholly immaterial, and, therefore, certain testimony which plaintiff was permitted to introduce over defendant's objection relative to the classification of similar shipments under other schedules or at other times should have been excluded. Under the rate classification sheet in force when this shipment was made, these goods were not specifically mentioned, but there was a general classification therein under the heading "Blankets," and goods included under this general classification were rated as first class freight and billed as such by the common carrier.

It appears in evidence that the various transportation companies, from time to time, through their representatives, meet and adopt classification sheets in which the different kinds of merchandise are classified and the rate for transporting same is fixed. These classification sheets, when agreed upon, are filed with the Interstate Commerce Commission pursuant to the provisions of the Interstate Commerce Law, and thereafter and while in force no transportation company has any right to deviate therefrom. All contracts entered into with common carriers are presumed to be governed by the classification sheet in force at the time of the shipment. Whether such classification is just or unjust, it is, nevertheless, binding, both upon the common carrier and the shipper, so long as the same remains in force. The tariff thus fixed must govern regardless of any contract for a greater or less rate. The transportation companies having the sole right to fix such classification sheets, without any voice on the part of the shipper, it follows as a matter of law that in construing the same, the intention of the framers thereof, when such intention can be ascertained, should be given effect; and in arriving at such intention the court should give no weight to the alleged intent of the shipper or to any local custom or usages of trade as to the meaning of words or expressions contained in such classification sheets. Guided by this rule we are of the opinion that the shipment in question came clearly under the general classification heading of "Blankets." Such was the evident intent of the framers of the schedule as shown by the testimony, and this construction is supported by standard authority as to the definition of the word "blanket." See Webster's International Dictionary. If we are correct in this conclusion, then it follows that said shipment was properly billed as first class freight, and defendant is entitled to the possession of the goods under its lien as a common carrier until the proper freight charges are paid or tendered.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Two Carriers Are Liable

To the Editor of Freight:

SIR—We have had occasion to file a claim against Mo. Pac. Ry. Co. for loss and damage sustained by us to a carload of yellow pine lath, damaged in the flood at East St. Louis. We have shown that the car was mishandled and wrongly billed, and that they had ample warning from the Weather Bureau of the probable date high water would reach the point in question, and we consider that they are liable for the loss sustained. We would therefore, be pleased to have you give us your opinion on the subject. The claim has now been under investigation about three years, and is about drawing to a close, and we believe that the stand we take is a correct one, and before we take legal proceedings would be pleased to have you render your opinion.

We are subscribers to your magazine, and believe that you request subscribers to ask for opinions when in trouble. Yours very truly,

ARKANSAS LUMBER COMPANY,
R. J. FINE, Sales Agent.

ST. LOUIS, May 2, 1906.

Arkansas Lumber Company, St. Louis, Mo.:

GENTLEMEN—In order to answer this inquiry fully, the following information should be furnished:

1. Copy of the bill of lading, with information whether or not same consigned by consignor and the State from which shipment originated.

2. Full data concerning mishandling and wrong billing, and if wrongly billed by the railroad contrary to the instructions of consignor that fact should be stated.

3. Whether or not, under all the facts and circumstances, if the carrier, by the use of reasonable diligence, could have removed the shipment so as to prevent loss and damage. Yours truly,

FREIGHT PUBLISHING COMPANY.

NEW YORK, May 9, 1906.

To the Editor of Freight:

SIR—We wish to thank you for your kind letter of the 11th, inclosing copy of letter from your Legal Department requesting further information regarding our loss and damage claim, and will state that the shipment in question was billed from Warren, Ark., May 28, 1905; reached East St. Louis June 3, and was held on account of a dispute between the Iron Mountain and Burlington railroads from this date until June 23. You will note from this that due diligence was not used in forwarding the shipment out of East St. Louis, and in consequence thereof the car was damaged to the extent of our claim.

We are unable to furnish the original B/L, as it is attached to the original papers now on file with the railroad company. Can state that our investigation developed the fact that the shipment was billed correctly to R. B. Ash & Co., Milan, Mo., but through error in transfer of billing was delivered to the Burlington for the Acme Cement and Plaster Company, Hannibal, Mo.

Since writing you we have received a letter from the Missouri Pacific people, in which they acknowledge that our claim is just and legitimate, and that they were ready to refund us one-half of the loss and damage on demand, the other to be held until they could force

the Burlington to come in for their portion. The way the matter now stands it appears that we might have to bring suit in order to force the Burlington to shoulder their part of the responsibility. However, we consider that, as the shipment originated on the Iron Mountain, they should protect us in this and force the Burlington, under the freight claim agent's rules, to join them in relief.

We would be glad to have you render us an opinion in the matter, however, as the probabilities are that we will have to enter suit.

Hoping to hear from you soon in regard to the matter, we beg to remain,

Yours truly,
ARKANSAS LUMBER COMPANY,
R. J. FINE, Sales Agent.

ST. LOUIS, May 14, 1906.

As the carriers in this case did not use due diligence in forwarding the car referred to on account of dispute between the connecting roads, and the car was held at East St. Louis for a period of twenty days, the two carriers are liable. The most recent case upon this subject and one in which all of the cases are reviewed, is *Green Wheeler Shoe Co. v. C. R. I. & P. Ry.*, 106 N. W. 498. This case involved the destruction of property by reason of a flood at Kansas City, occurring on May 30, 1903. After reviewing the cases dealing with the negligent delay of property, the court said:

The real difficulty seems to be in determining to what extent, if at all, it is necessary that the negligent party must have been able to foresee and anticipate the result of his negligent act in order to render him liable for the consequences thereof resulting from a concurrence of his negligence and another cause for which he is not responsible. In an action on contract, the party who is at fault is only liable for such consequences as arise according to the usual course of things from his breach, or such as may reasonably be supposed to have been in the contemplation of both parties at the time the contract was made as the probable result of the breach. (*Hadley v. Baxendale*, 9 Exch. 341; *Sedgwick, Elements of Damage*, 17.) But in an action for tort, and the present action is of that character, recovery is not limited to the consequences within the contemplation of the party, or either of them, but includes all the consequences "resulting by ordinary natural sequence, whether foreseen by the wrongdoer or not, provided that the operation of the cause of action is not interrupted by the intervention of an independent agent or overpowering force, and that but for the operation of the cause of action the consequence would not have ensued." (*Sedgwick, Elements of Damage*, par. 54.) It is true that for the purpose of determining whether the injury suffered by the party complaining was the natural and probable result of the wrong complained of, a convenient test is to consider whether, in general, such a result might have been foreseen as the consequence of the wrong, but it is not necessary "that the injury in the precise form in which it in fact resulted should have been foreseen. It is enough that it now appears to have been the natural and probable consequence." (*Hill v. Windsor*, 118 Mass., 251.)

An Anomaly in Rate Making Remedied

To the Editor of Freight:

SIR—In response to your invitation to write you on traffic matters, we would like to have your opinion on the following:

The C. & N. W. Railway Company charged us a rate of 25 cents per cwt. on cans crated, L. C. L., from Chicago to Milwaukee, while the commodity rate from Maywood, Ill., to Milwaukee, is 15 cents in L. C. L. In delivering freight from Maywood to Milwaukee it is necessary to bring it via the same route as it travels from Chicago to Milwaukee.

Please note copy of their amendment, reducing the rate on this commodity, under date of December 5, 1904.

The railroad company now claim that the rate of 25 cents on cans in L. C. L. business is correct from Chicago, whereas from Maywood it takes a rate of 15 cents, and decline to entertain the claim.

We will be glad to have your opinion on this subject, and hope to hear from you at your convenience.

Yours truly,

PATTON PAINT COMPANY.

E. C. HYLAND,

Traffic Manager.

MILWAUKEE, Wis., May 11, 1906.

AMENDMENT NO. 2

to

C. & NW. G. F. D. 4776. I. C. C. No. 4989.

CHICAGO NORTHWESTERN RAILWAY.

General Freight Department.

CHICAGO, December 5, 1904.

Refer to freight tariff applying on miscellaneous commodities between Illinois, Wisconsin and Michigan points, and make the following correction:

Correct the railroad rate on tin pails, cans, etc., shown in item No. 227, from Maywood, Ill., to Milwaukee, Wis., to read 8c. per 100 lbs. instead of 9c.

Effective December 10, 1904.

MARVIN HUGHITT, JR., E. D. BRIGHAM,
F. T. M., C. & NW. Ry., G. F. A. C. & NW. Ry.,
Chicago, Ill. Chicago, Ill.

This case discloses one of the many anomalies in rate making. The present rate on cans from Maywood, Ill., to Milwaukee, is a commodity rate; C. L., 8 cents; L. C. L., 15 cents. From Chicago only the class rates apply. If boxed, crated or jacketed, 25 cents; if nested in boxes, barrels or crates, 20 cents if N. O. S., 50 cents—all L. C. L. Maywood is in Cook County, Ill., and practically a suburb of Chicago. Goods originating at Maywood, destined to Milwaukee, pass through Chicago. Why there should be a commodity rate from Maywood and only class rates from Chicago cannot be stated. In the absence of some good reason for this, it would appear to be a discrimination against Chicago proper, and a clear violation of the fourth section of the act to regulate commerce. It will be noted that this apparent violation is not subject to the usual defense made by the carrier, *i. e.*, there is no water competition from Maywood to Milwaukee. Did such competition exist the commodity rate might be defended. As a matter of fact, if there is water competition at all it is from Chicago to Milwaukee. The freight having been charged according to the published tariff, the inquirer, as well as the carrier, is precluded by the Elkins law from deviating therefrom.

INQUIRY PATTON PAINT COMPANY—SECOND REPLY.

Inquiry made of E. D. Brigham concerning rates on tin cans, L. C. L., Maywood to Milwaukee, produces the following reply: "There is a rate of 15 cents per 100 lbs. on tin cans, L. C. L., from Maywood to Milwaukee. The rate from Maywood would naturally apply from Chicago as a maximum on account of Chicago being intermediate. In order to make the matter clearer, however, we will reissue our tariff and send you copy within a few days."

INQUIRY PATTON PAINT COMPANY—THIRD REPLY.

We are now advised that the rate on this commodity from Chicago to Milwaukee has been made the same as from Maywood to Milwaukee by amendment 9 to I. C. C. tariff No. 5,209, effective June 16, 1906.

Carriers Must Furnish Suitable Equipment

To the Editor of Freight:

SIR—In loading stoneware in cars, to fill them to their minimum weight it is necessary to load the goods above the average inside car door, which necessitates the use of either car doors or strips. Kindly advise whether or not the railway companies are compelled to furnish these grain doors or strips in order to permit us to load the car properly. In some cases there are no grain doors whatever in the car.

If it is the duty of the railroad companies to furnish these and they refuse to do so, compelling us to use lumber, can we not legally recover by claim?

Yours very truly,

WESTERN STONEWARE COMPANY,

By C. S. WISE,

Mgr. Traffic Dept.

MONMOUTH, Ill., June 4, 1906.

It is clearly the duty of carriers to furnish suitable equipment. And it has been held that carriers are under an obligation in furnishing a suitable equipment, to furnish grain doors and other similar necessities. If there be no grain door or the door be not high enough, the carrier is under the obligation to furnish lumber to board the door sufficiently high. Failure to comply with its duty in this behalf makes the carrier liable for the value of the material used by the shipper.

Right to Examine Goods

To the Editor of Freight:

SIR—More trouble. About a year ago we shipped to a party in London, Ohio, from the factory at Grand Rapids, Mich., through a third party (a jobber located at La Crosse, Wis.), a very large refrigerator. Our verbal agreement with purchaser was that the box was to be shipped as illustrated in the catalogue of the factory, with the exception that some of the shelving was to be of porcelain. These being a special order and not carried in stock at the factory, had to be made and were to be shipped as soon as the factory could make them in the regular course of business. The box was shipped as per illustration, and upon arrival was

refused by consignee, because he said it was not what he had bought. We corresponded further with him and asked him to take the box out of the depot, and that if it was not what he had ordered we would take same off his hands. This he refused to do, and we, to avoid additional expense in the matter, did not ship the shelving when finished, but notified him of the fact and presented our bill at the same time. He refused the account, and we entered suit against him, taking judgment in the Squire's Court, from which he appealed. We have just finished the case and lost on perjured testimony and an unfair local jury. One of the points developed was that he was permitted to uncrate and examine the box at the depot without paying the freight or signing a receipt for same. This, in my opinion, is an unusual proceeding. We and others are not permitted to examine the contents of any packages or boxes that we receive other than what you might term outside inspection. The point that we had intended to prove was that he was not justified in refusing to accept the box when he did not know of its construction, it being packed in such a manner that the inside could not be seen without first uncrating same.

I am told that the railroad company is responsible to me for the cost of the box, as, in allowing this inspection, they assumed that responsibility. If this be the case I would be pleased to hear from you; also please quote your authority. I do not think that we will proceed against them, but I could use the information to advantage in this and other transactions. I might add that we have asked for a new trial.

Awaiting your reply, I am, Yours truly,

ANTHONY LUCIK,

By J. J. LUCIK.

CINCINNATI, Ohio, June 6, 1906.

P. S.—We proved our every statement, and that the box was to be shipped as illustrated and the shelving was to follow.

The latest decision concerning the right of a carrier to permit a consignee to examine goods where no instructions are given, the carrier in this matter is the case of *Dudley v. C. M. & St. P. Ry. Co.*, 52 S. E. 718. (See *FREIGHT*, April, 1906, page 186; also May, 1906, page 256.) In the absence of fraud the carrier undoubtedly has a right to permit the consignee to inspect goods whether the shipment be "straight" or "to order."

Concerning the Ownership of Goods

To the Editor of Freight:

SIR—Can you inform us what decisions have been made as to the ownership of goods shipped f. o. b. Pittsburg, consigned from New York? We have been informed that all goods shipped freight or express, paid or f. o. b. destination, belong to the consignee, and all claims for loss or damage should be made by him.

On an entire shipment refused on account of damage en route, is it necessary that we should pay the freight in order to make a claim for the value of the goods, or is it up to the shipper to make such a claim? This refers to a shipment not shipped f. o. b. Pittsburg.

Yours truly,

JOSEPH HORNE COMPANY,
DURBIN HORNE, President.

PITTSBURG, Pa., June 7, 1906.
(Rec. Depmt.)

There is a presumption of law that the consignee is the owner of the goods and therefore the person entitled to sue, if they be lost or damaged in transit. An action brought against a carrier should, in most cases, be begun in the name of the consignee. This presumption of law, however, is a rebuttable one; it by no means follows that the consignee is the owner or in any way interested in the goods, or that he is the only person who can sue the carrier for the loss and damage. Any one who has a special property in the goods may bring suit, such as a factor, broker or warehouseman. Hutchinson, after considering the various decisions upon the subject of whom should sue, thus concludes:

First, that when the risk of the safe transportation of the goods is upon the consignor, he will be considered as the owner for the purpose of maintaining an action against the carrier for their loss or injury. Secondly, that whether he retains any property in the goods or not, if the contract for the transportation by the carrier is directly with him, he may maintain the action upon such contract in his own name for the failure to safely carry and deliver to the consignee, but that the recovery in such a case will be for the benefit of the consignee, if he was the real owner of the goods. Thirdly, that the law will presume, when nothing appears to the contrary, that the consignee is the owner of the goods, and that the contract for their transportation was made with him as such owner, but that this presumption may be rebutted by showing the actual facts or the intention of the parties to the contract. Fourthly, that the consignee who had no property in the goods, either general or special, and incurred no risk in their transportation, cannot maintain an action for their loss or damage.

The seller of goods who makes a price f. o. b. Pittsburg and they originate elsewhere, assumes the risk of transportation. And, in the event of loss and damage, claims should be made by the vendor. If, however, the purchaser has paid for them, it is clear that he would have a right to sue the carrier.

Where a shipment is bought f. o. b. point of origin, and it is lost or damaged in transit, it is believed that it is customary for the consignor to make a claim, unless the bargain between the consignor and consignee concerning the goods has been consummated, i. e., the goods have been paid for. If the goods have been paid for the consignee usually makes the claim. There is no necessity, where an entire shipment has been refused on account of damage in transit, that the consignee should pay the freight before making a claim; if it is a proper charge, it may be credited upon the claim.

Bill of Lading Law

To the Editor of Freight:

SIR—Here is a transportation matter that has just come to our notice and about which there is a difference of legal opinion.

A makes a shipment of eggs to B and mails the bill of lading. C, who is an irresponsible party, comes into possession of the bill of lading in an irregular manner by obtaining B's mail, which he had transferred to another address, forges B's name and

hypothecated the bill of lading, D advancing money nearly equivalent to the market value of the eggs.

A appears on the scene and is advised by B that he had better stop the delivery of the shipment, and he immediately notifies the railroad company in person, explaining the circumstances and submitting proof that he is the rightful owner of the property, and orders the railroad company not to deliver to the party presenting the bill of lading. He demands that the shipment be delivered to his order, and the claim department of the railroad requires him to put up a bond of indemnity.

The following questions arise:

What is A's liability to the railroad company? Can B be held jointly liable with A in protecting the railroad company in the suit brought by D? Would evidence of fraud, obtaining money under false pretenses or forgery on the part of C offset D's shadow of title to the property by the mere possession of the bill of lading? Did A surrender his title to the property when he sent the bill of lading to B, and was he justifiable in resorting to the course he did to protect his property, which he had reason to believe was in jeopardy?

Presume there are various court decisions varying on the different aspects of this case, and we are confident that an article in your able magazine would be appreciated, not only by the parties at interest and ourselves, but by the shipping public generally.

Yours very truly, CHICAGO PACKER.

Per W. T. SEIBELS.

CHICAGO, June 7, 1906.

Subject to a State law the facts of this case are to be tested by the law merchant. A bill of lading is not fully negotiable. While business men are accustomed to regard bills of lading as so much merchandise which is described by them, they are not negotiable instruments in that they lack some of the essential characteristics of that class of documents; there is, generally, no definite money value; there is no particular time for payment or for presentment. The most that can be said respecting bills of lading in this behalf is that they are quasi-negotiable, even under a statute which attempts to make them negotiable. One of the differences between negotiable and non-negotiable instruments is that the negotiable instrument in the hands of a bona fide holder for value cuts out prior equities.

A bona fide holder of a bill of lading must have taken the document in good faith, without fraud on his part and without the knowledge of any fraud on the part of the transferee, and without notice or knowledge of facts or circumstances either upon the face of the document or by extrinsic facts which would lead a reasonably cautious man to investigate, and upon investigation, would lead to the discovery of such fraud or defects as would vitiate the transaction; perhaps, also, it is required that a bona fide holder shall be paid value therefor. It is, however, immaterial whether he has paid or he agrees to pay.

Bills of lading pass by indorsement and delivery. If indorsed in blank the delivery accomplishes the purpose; it must be remembered, however, that delivery is essential.

This general rule may be accepted as the law concerning the indorsement and delivery of bills of lading. The indorsement of a bill of lading without the authority, consent or knowledge of the owner of the goods transfers no title to the indorsee in good faith. One having no title to the goods cannot convey title. *Brower v. Peabody*, 13 N. Y. 121; *Dows v. Perrin*, 16 N. Y. 325; *First Nat. Bk. v. Shaw*, 61 N. Y. 283; *Tison v. Howard*, 67 Ga. 410; *Decau v. Shipper*, 35 Pa. St. 239.

It is clear from the inquiry that "C" acquired no title to the property covered by the bill of lading; his first offence in this transaction was securing the mail of "B"; his second, indorsing "B's" name to the bill of lading; third, representing to "D" that he had title to the goods when in truth he had not.

"A's" liability to the railroad is subject to "B's" demand; "B" may have been the proper party to institute suit against the carrier for the goods. (See opinion to inquiry *Jos. Horne & Co.*) In such cases as this, however, "A" and "B" are usually on amicable terms, and one of them waives his right as consignor or consignee in favor of the other. "A's" liability to the carrier, assuming that "B" waives his rights against the carrier or assigns them to "A," is simply the proof of the fact that he had title to the goods and attempted to transfer it to "B," but title having failed to pass to "B," it relates back to "A."

The consignee "B" cannot be held jointly liable with "A" in protecting the railroad in a suit brought by "D," unless "B" had previous knowledge of the fraud of "C." The consignor "A" did not surrender his title to the property when he sent the bill of lading to "B," because there was no delivery of the bill of lading in accordance with the intent of "A"; we think he was justified in taking the course which he did to protect his property. The party who has suffered in this transaction is "D," as he has both a civil remedy against "C" and also a criminal remedy for obtaining money under false pretenses; "B" can also proceed criminally against "C" for the forgery.

In this connection the inquiry of W. R. Mumford Co., *FREIGHT*, May, 1906, page 255, may be referred to.

The leading case in the Supreme Court of the United States relating to bills of lading is *Shaw v. Bank*, 101 U. S. 557, where it was held that the law relating to lost or stolen bills or notes by which a bona fide purchaser acquired good title, does not apply to lost or stolen bills of lading, but these like the goods represented by the bill, if lost or stolen, do not vest title in a bona fide purchaser for value unless the owner thereof is estopped by carelessness in enabling the thief or finder to occupy the position of owner. This doctrine has been followed in *Friedlander v. Tex.*, etc., Ry., 130 U. S. 424; *Weyand v. Atchinson*, etc., Ry., 75 Iowa 579; *The Serapis*, 37 Fed. 438; *Clay, etc., v. Gage, etc.*, 1 Tex. Civ. App. 663; *Mont-*

clair v. Ramsdell, 107 U. S. 158; Haas v. K. C., etc., R. R., 81 Ga. 796. —

How to Obtain a Reasonable Rate

To the Editor of Freight:

SIR—The charges for wharfage at Cairo, Ill., seem to me to be exorbitant, certainly very unreasonable. My attorney tells me that such rates must be reasonable, but there is no provision of law by which I can get them reduced. What are the users to do?

N. O. LOVE.

DARDWELL, Ky., June 10, 1906.

Tell your attorney to read the case of Packet Co. v. Catlettsburg, 105 U. S. 559. In that case the Supreme Court, after stating that charges for the use of public wharves must be reasonable, said: "There is no hindrance to trying this question in an action at law, where the verdict of a jury or the judgment of the court in one or two cases would establish what is reasonable under the circumstances, and this being once established by the appropriate tribunal, the court of equity could restrain the excess."

Claim for Damage to Lumber

To the Editor of Freight:

SIR—On March 29 we shipped from Lumberton, Miss., a carload of dressed yellow pine flooring. This lumber arrived at destination, Montello, Mass., on May 25, transferred from the original car and having been nearly two months in transit. The condition of the flooring is such as to make it unfit for present use, it having become very wet and moldy. Have we a right to refuse to accept this lumber from the railroad, and what is the proper method of obtaining redress for the damages?

Very truly yours,
JONES HARDWOOD COMPANY, Inc.,
GARDNER I. JONES, Treas.

BOSTON, Mass., May 29, 1906.

The question of whether or not the carrier is liable in this case will depend upon the reason for the lumber getting out of condition. If the goods became unfit for use by reason of their inherent quality, such as being too green when shipped, the carrier is not liable. If the original car or the car which arrived at destination leaked, the carrier is liable. So also the carrier is liable if the goods were held out an unreasonable length of time, upon a theory that green lumber would not mould if kept in a closed car for ten days or two weeks, but would if kept two months. It appears that the time this car was out is unreasonable.

The inquirer should first ascertain what carrier is liable for the delay, or leaking or other cause, and institute suit against it for the value of the merchandise. If the consignee prefer, he may file a claim for the value with final carrier.

Shipments at "Owners' Risk"

To the Editor of Freight:

SIR—This morning we have subscribed to your magazine through A. E. Watson; the question in mind at the time being propounded to him, brought

forth the answer that you would advise us at once. Will say that the matter in question is a shipment made by the writer personally a matter of ten days ago, which consisted of a matinee road cart, the same being properly crated and acknowledged in this condition by the agent of the express company. However, they did insist on stamping their receipt, "At Owner's Risk Only."

What I wish to know is whether, in case of breakage, they would not become liable from the very fact of this being properly crated. If it was sent in a condition where a breakage could occur, with reasonable handling, I should not think anything of it; but as a matter of fact, this cart was received in a damaged condition, which necessitated an outlay, and I would like to get your opinion as to whether damages could be assessed against the transportation company or not. If you will kindly give this your immediate attention, you will oblige

Yours very truly,
NEW ENGLAND RUBBER SHOE COMPANY,
E. B. SWETT, Prest.

BOSTON, Mass., June 13, 1906.

It is clearly the law, relating to express companies, that they have a right to limit their liability as carriers. This may be effected by special contract, and also, in some instances, by a public notice. The United States decisions holding that an express company may limit its liability by contract are: Kentucky Bank v. Adams Express Co., 93 U. S. 174; New Jersey Steam Nav. Co. v. Merchants Bank, 6 How. (U. S.) 382; U. S. Express Co. v. Kountze, 8 Wall (U. S.) 342; Muser v. Holland, 17 Blatchf. 412; Earnest v. Southern Express Co., 1 Woods (U. S.) 573. This doctrine is affirmed in the States of Alabama, California, Colorado, Georgia, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, Ohio, Pennsylvania, South Carolina and West Virginia, and also the District of Columbia.

An express company cannot, however, relieve itself from liability for the negligence of its agents and servants. In the case submitted the question of liability of the express company will turn upon the mixed question of fact and of law, whether or not the express company's agents and servants were guilty of negligence in handling the cart, even if shipped at "owner's risk." This phrase, "owner's risk," means ordinary handling, and not at "owner's risk" of the negligence of the company's agents and servants. If the cart was crated to withstand ordinary, usual and customary handling, and was damaged by reason of negligent handling, the express company is liable.

New Style of Lumber Cars

George W. DuBes, treasurer of the Ruddock-Orleans Cypress Company, of New Orleans, has been successful in securing patents on improved styles of log and lumber cars which are destined to revolutionize the lumber carrying industry of the entire country. Mr. DuBes' invention consists of a new form of standard or upright to be used along the sides of the flat cars, and which will replace the present staves driven into the pockets on each side of the car in order to confine the load of lumber.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Milwaukee Refrigerator Company Case

The Circuit Court for the Eastern District of Wisconsin, after overruling the demurrers in the case against the Milwaukee Refrigerator Company, as stated in the June number of *FREIGHT* (page 319), heard the case upon the merits and rendered the following opinion. For the court Judge Baker spoke, the other Judges sitting being Grosscup, Seaman and Kohlsaot:

This is a proceeding to enjoin the defendants from continuing practices which are claimed to be in violation of the Elkins Act. (32 Stat., 847; R. S. Sup., 1903, pp. 363-366.)

The charges in the petition are substantially these:

That the brewing company organized the refrigerator company, is the beneficial owner of the refrigerator company stock, and thereby indirectly receives the moneys paid by the railroad companies to the refrigerator company on account of beer shipments, as hereinafter stated.

That the refrigerator company (apart from the charge that it is a dummy of the brewing company) was organized and is being carried on as a device for the purpose and with the intent of exacting from the railroad companies a large proportion of the freight moneys for interstate and foreign shipments controlled by it; that it has obtained and holds contracts from the brewing company and other owners of goods whereby it is given the exclusive control of shipments to competitive points; that it withholds such traffic from railroad companies which refuse to return to it from one-tenth to one-eighth of the freight moneys and gives the business only to the railroad companies which contract to make such returns.

That the defendant railroad companies, with the intent of evading the law, have entered into such contracts with the refrigerator company, and thereunder have paid to the refrigerator company from one-tenth to one-eighth of the freight moneys on all traffic controlled by the refrigerator company.

That unless restrained the parties will continue these practices.

I.—As to the brewing company:

The majority of the brewing company stock is owned by persons who have no interest in the refrigerator company. The stock of the refrigerator company was bought and paid for by the holders thereof with their own money and in their own interest. None of it is held in trust for the brewing company. The majority of it is owned by persons who also own brewing company stock. But the brewing company pays its freight in full, receives no rebates, and is not a party to the contracts between the refrigerator and the railroad companies. Under the evidence the most that can be fairly said of the relations between the brewing and refrigerator companies is that the former gave the control of shipments of beer to the latter as a favor and to enable it to profit thereby if it could. For failure of proof the charges against the brewing company are dismissed.

II.—Objections to the maintenance of this proceeding against the remaining defendants:

(1) Contention is made that equity jurisdiction does not inherently extend, and can not by Congress be extended, to restraining the commission of crimes and misdemeanors.

To afford protection where other means are inadequate has been accounted the chief merit of equity. That the infraction of a complainant's rights may also constitute a crime is no reason for denying relief. Cases of refusal where no property was involved came largely, we believe, from the consideration that equity will not enter unenforceable decrees, and not from

regard for the intended doing of the criminal act. If a complainant's rights, whether the higher and more sacred rights of person (Warfield's case, 76 Am. St. R., 727; Itzkovitch v. Whitaker, 39 So. Rep. 499) or the lower and more sordid rights of property, cannot be adequately protected elsewhere, and if a decree and writ that will be enforceable can be framed, no court of equity should acknowledge itself wanting in the primary power of devising decrees and writs to meet the demands of the situation.

The evils that have resulted from railroad companies' secret abatement of published rates in favor of particular persons have long been matters of common report and discussion. If a person whose business was being undermined and ruined through advantages unlawfully given to a competitor should seek relief in equity, the objection that a property right was not involved would be wanting. Because the persons affected are so numerous and widely separated, because their injuries severally may be small, and because the United States has the regulation of interstate and foreign commerce, in our opinion Congress very clearly had the power to authorize equity proceedings by the United States as complainant (*parens patriæ* in that respect) for the protection of all persons who would be injured by the unlawful practices. This conclusion necessarily was upheld in *Swift v. United States* (196 U. S., 375), though the contrary contention seems not to have been presented, and in *Missouri Pacific Railway v. United States* (189 U. S., 274), wherein the question was argued by counsel.

(2) The Attorney-General, of his own motion, directed the institution of this proceeding. Defendants claim that a suit of this kind will not lie except upon the initiative of the Interstate Commerce Commission. Section 3 of the Elkins Act opens by providing for action by the Commission after investigation. The bill, as it passed the Senate and went to the House, evidently contemplated no other mode. In the House the mandate that "it shall be the duty of the several district attorneys of the United States to institute and prosecute such proceedings" was amended by inserting after "United States" the clause "whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission." Whatever doubt concerning the authority of the Attorney-General to direct the bringing of this suit might arise from a mere reading of Section 3 is removed, we think, by noting the history of the bill.

(3) A witness for complainant testified on cross-examination in substance that he was president of a rival refrigerator company; that he brought the alleged unlawful acts of defendants to the notice of the Interstate Commerce Commission; that the Commission took no action; that subsequently he called the Attorney-General's attention to these matters; that the Attorney-General stated to the witness that he would direct the district attorney to begin proceedings; that he believed the district attorney should have assistance, but doubted whether the appropriation at his command for that purpose would suffice to bear all of the expense, and asked the witness if his company would make up any deficiency; that the witness assented; that on the Attorney-General's inquiry concerning desirable special counsel the witness named Mr. Charles Quarles, who subsequently was retained by the Attorney-General; that the witness, by reason of his arrangement with the Attorney-General, has made payments to Mr. Quarles, and that Mr. Quarles represents the witness in certain lawsuits.

On this the defendants have based a motion to dismiss the proceedings.

That the Attorney-General exercised his own judgment in determining to direct the bringing of this suit is quite apparent.

No witness, though hostile, can properly be criticised for calling the attention of the authorities to alleged violations of law. The facts on which the questions of legality depend are admitted by the defendants. No improper conduct by Mr. Quarles in eliciting the facts is shown or claimed. In open court defendants expressly waived any objection to the presentation and argument of the questions of law by Mr. Quarles on behalf of the United States.

If it be conceded that the law requires the United States to be represented by counsel who are as interested to see the innocent discharged as the guilty held, and that the Attorney-General is not authorized to retain special counsel, except on the basis that compensation shall come from the United States and nowhere else, it might be that the defendants would be entitled to a stay of proceedings until the United States should be represented by counsel concerning whose relations no objection could be urged. But this is not asked. And since the Attorney-General properly directed the District Attorney to begin and prosecute this proceeding, and the defendants conceded the facts on which liability must be predicated, if at all, they certainly are not entitled to a dismissal.

III.—The character of the refrigerator company's practices.

The company owns refrigerator cars which it places at the disposal of railroad companies for use by them in handling certain kinds of traffic, and they pay it rent for the cars in the form of mileage. There is neither averment nor proof which attacks the company in its character of lessor of cars to the railroads.

But, under the conceded facts as we view them, the refrigerator company in its relations with the railroads appears in another role—that of shipper. From the brewing company and other owners of goods intended for interstate and foreign transportation the refrigerator company obtains the exclusive right to route the shipments to all competitive points, and then withholds or gives the business according to the railroad companies' resistance or submission to the threat of diverting the traffic unless a tenth or an eighth of the freight moneys be paid to it. Control of the traffic is as absolute in the refrigerator company as if it were the owner. And in numerous transactions the owner is not the shipper. And if an owner, having full dominion in all respects, conveys to another the dominion for transportation purposes, that other in all dealings respecting transportation should be deemed the owner and shipper. In this case, if the refrigerator company bought the beer and paid the brewing company's bill less freight and then collected the beer accounts and paid the railroads seven-eighths or nine-tenths of the published rates the granting of a rebate or a concession by a carrier to a shipper would not be denied, we take it; and yet, so far as ledger balances and profits of the brewing company, the refrigerator company, and the railroads are concerned, the present method in its results is precisely that.

The foregoing consideration is in answer to the defendant's insistence that the Elkins Act touches only the carrier and the shipper. But under the strictest construction (and that the act should be fairly interpreted to effectuate its remedial purposes, see *New York, etc., R. R. Co. v. Interstate Commerce Commission*, 200 U. S., 361) we think it was designed to restrain all "parties interested in the traffic." In Section 1:

"It shall be unlawful for any person, persons, or corporation * * * to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce * * * whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier."

In Section 2:

"It shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration."

And in Section 3:

"Upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs * * * by proper orders, writs, and process * * * as well against the parties interested in the traffic as against the carrier."

So, if the refrigerator company be not considered as the shipper, it is at least a "party interested in the traffic."

IV.—In the practice stated it is evident that the railroad companies in acceding to the demands of the refrigerator company have (1) failed strictly to observe the published tariffs, and (2) granted concessions whereby they received a less rate than that named in the published tariffs for the transportation of property in interstate and foreign commerce, both in disregard of the provisions of Section 1.

It matters not that the particular practice herein disclosed is not described in the act. The inhibitions of "any device whatever" that accomplishes the condemned results is a ban upon invention in this field.

So far as the fact of intent is material it follows from the consideration that the parties knowingly and deliberately did what they did.

Let a decree be entered against the refrigerator and railroad companies defendant in accordance with the prayer of the petition.

Publication of Export Tariffs

The United States Circuit Court for the Western District of Missouri has decided an interesting question relating to the publication of export tariffs. Judge Smith McPherson presided and rendered an opinion upon a demurrer to an indictment by which the Burlington and other railway companies were charged with failing to publish and post their tariffs on foreign business. Interpreting the Interstate Commerce Act, after referring to the provisions of the act requiring that a notice of three days shall be given for reducing and of ten days for advancing rates, said:

"It is clear that carriers by railways and inland water, when acting under a common agreement, are covered by the statutes, as well as commerce by any method with an adjacent foreign country. And as to interstate commerce, it is included. Because these are specifically enumerated, it is contended that all others are excluded. There, in my opinion, is the error of the entire argument of defendants' counsel. Congress did not enumerate ocean commerce, because it would have been frivolous to do so."

Judge McPherson says full force can be given to the statute only by enforcing it on shipments to New York. When the merchandise is transferred to vessels it, of course, passes from the jurisdiction. "And it seems to me," he says, in conclusion, "that when this is done it can be under an established rate, proclaimed by a published and posted tariff rate."

The publication of tariffs on export and import traffic was a subject of investigation by the Interstate Commerce Commission, and in its opinion rendered February 5, 1904 (10 I. C. C. 55), arrived at the following conclusions:

1. That the act now requires the publication of import and export tariffs in the same manner as domestic tariffs.

2. That public policy urgently requires that the inland transportation of import and export commerce should be subject to the Act to Regulate Commerce, and that the publish-

ing and maintaining of tariffs upon such traffic imposes in most instances no hardship upon the carrier. There may be cases in which a modification of this rule would be of service to the carrier without detriment to the public, and perhaps other instances in which such modification should be granted in the interest of both the carrier and the public. This can only be accomplished by an amendment of the act, since the provisions of that statute are mandatory, and the Commission has no power to modify their requirements.

3. If carriers are to any extent relieved from giving the notice now required of advances and reductions in rates upon foreign commerce they should in all cases file with the Commission the rates actually made and give such further notice to the public as may be possible.

Since the decision of the Commission some of the carriers have filed tariffs on certain commodities, others have advised the Commission of rates made, after they have actually been made for each shipment, and others have refused or neglected to give the Commission information concerning their rates on foreign commerce.

Powhattan Coal & Coke Company Suit

The Powhattan Coal & Coke Company has instituted suit against the Norfolk & Western Railroad, alleging unfair discrimination in furnishing coal cars. It is contended by the coal company that cars ought to be distributed on the basis of capacity to load and not on a coke oven basis, and that the company ought not to set aside cars for five coal operators on the land belonging to the railway.

IMPORTANT DECISIONS IN BRIEF

A carrier who delivers property to a person other than the consignee or his assigns, will be held liable for wrong delivery even though it was the result of an innocent mistake. (*M. & M. Trans. Co. v. Moore*, 52 S. E. 802.)

Where a statute provides that every claim for loss and damages against a common carrier shall be adjusted and paid within a specified time, otherwise that the carrier shall be liable to a penalty, such statute has been held to be constitutional, notwithstanding the equality clause of the Fourteenth Amendment of the United States Constitution. (*Seegers v. S. A. L. Ry.*, 52 S. E., 797 S. C.)

Where an express company transported goods and tendered them to the consignee, who refused to accept them and the express company failed to notify the consignor of the non-acceptance and subsequently the goods were lost or stolen, it was held that the express company was not liable in the absence of proof of its negligence. (*Adler v. Weir*, 96 N. Y., Supp. 736.)

A statute provided that "all baggage, when taken for transportation, shall be checked," and further, that if a check be refused on demand the corporation should pay the passenger certain amounts as penalties. In a suit to recover the penalties it was determined that the carrier was not liable where its agents refused to accept a trunk "for transportation" because there had been an attachment issued for it. (*Mitchell v. K. C. C. & S. Ry. Co.*, 90 S. W. 1,164.)

A judgment was recently recovered in a justice's court at Yates Center, Kansas, against a railroad company for \$275 under a Kansas statute providing that merchandise shall be transported at least at the rate of forty miles per day. The

shipment was a car of hay which was nearly seventy days in getting to Chicago. The case has been appealed to the District Court, and in all probability will go to the Supreme Court of the State, as the constitutionality of the law has been attacked.

The Supreme Court of Pennsylvania has affirmed the doctrine that a carrier has no lien on freight for demurrage due to delay in unloading barges, and consequently has no right to retain possession of the goods until the demurrage is paid. (*Nicolette Lumber Co. v. People's Coal Co.*, 62 Atl., 1060.)

Where a shipper of fruit undertakes to supply ice for a refrigerator car, but neglected to supply enough to properly cool the contents until the usual time for unloading, by reason of which the fruit was damaged by heat, the carrier is not liable for the loss to the fruit in the absence of negligence on its part in forwarding and delivering. (*C. I. & L. Ry. Co. v. Reymann*, 76 N. E., 970.)

If one ship scenery and other theatrical properties under a written contract and the carrier knew the purpose for which the same was to be used, and was also cognizant of the fact that the shipper was under great expense in the use of same, the shipper is entitled to recover where the goods have not been received at destination, his ordinary gross earnings, less expenses, if there be any, during the time his property has been negligently withheld from him. (*Weston v. B. & M. R. R.*, 76 N. E. 1050.)

Where an express company having lost one's trunk and did not deliver the same within a reasonable time after demand made by the owner, but later offered to deliver same, it was held that there was no conversion of the property, and the carrier was only liable for the damages which had been occasioned by the delay. (*Wells, Fargo & Co. v. Hansen*, 91 S. W. 321.)

Where a corporation is engaged in the business of a common carrier it is bound to receive all the goods which are offered it for transportation, within the limits of its liability to carry, and upon failure to perform such duties, a private party may compel performance thereof by mandamus. One who is accustomed to sell goods and ship by an express company to customers at another place is within the class who are entitled to relief by mandamus. And, where a municipal ordinance prescribed that it should be unlawful for any railroad or express company to deliver within the city intoxicating liquors without first paying a license therefor, and which prescribed a penalty for a violation of the ordinance, was held void as beyond the power of the city to enact. The case is an interesting one, for a jug of liquor was consigned to a city which has in force the ordinance, and it was refused by an express company. One of the defences was that even if the municipal ordinance is invalid, if the express company elected to obey it, it had a right to do so. This contention, however, was not sustained by the court. (*Sou. Exp. v. Rose*, 53 S. E. 185.)

Where a carrier's agent knew that a parcel checked as "baggage" was in fact a sample case which had been accepted as baggage by the same carrier for two years, and the same is lost or damaged in transit, the carrier is liable. But not to a penalty under a statute providing that a carrier shall be liable for the loss of baggage in double the amount of the actual damage, for such a statute applies only to baggage in its proper sense as personal apparel. (*N. O. & N. E. R. Co. v. Shackelford*, 40 Sou. 427.)

Where a passenger was recklessly and wilfully carried beyond her destination she was entitled, under a statute, to punitive damages. (*Hutchinson vs. So. Ry. Co.*, 52 S. E. 263.)

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

The Tidewater Development Company has filed articles of incorporation in the Probate Court of Birmingham and will engage in the building of electric roads and water lines throughout the State. The primary line of railroad will be constructed from Gadsden to Tuska-loosa. The incorporators are: J. M. Dewberry, trustee; R. H. Little, Dewberry & Sons, Herman Saks, Louis Saks, Lewis Minor, J. B. Chesney, of Atlanta; J. D. Hancock, J. W. Donnelly, R. A. and R. T. Clayton, Forney Johnston, Robert D. Johnston, Jr., and E. F. Enslin, Jr. The officers are James M. Dewberry, president; Lewis Minor, vice president; James W. Donnelly, secretary; E. F. Enslin, treasurer, and Forney Johnston, attorney.

Work will be begun on the new freight house of the Atlantic Coast Line at Montgomery within a few weeks.

The Southeastern Freight Association has made favorable rates for the American Radiator Company, which will build a plant in the Birmingham district. Specific rates on radiators and sectional cast iron in carload lots and less from Birmingham and group or to points in Eastern border, and Western groups will be the same as on stoves. The rates per 100 pounds are as follows: Ohio River points, 26 cents; Louisville, 23 cents; Cairo and Evansville, 25 cents; St. Louis, 33 cents; Memphis, 19 cents; Nashville, 18 cents; New Orleans and group, 24 cents.

There was a conflict between the Quarantine Board of Mobile and Collector of Customs W. F. Tebbetts, of the Treasury Department, over admitting vessels from Cuban ports with cargoes of fruit. Vessels have been held up five days. It was feared that the pineapples would convey yellow fever.

The new fruit warehouse and wharf of the Mobile & Ohio is about ready for occupancy.

The Illinois Central is to erect new freight terminals at Birmingham. The buildings will cost over \$100,000.

The Alabama Great Southern Railway and connections contemplate material reduction in freight rates to Birmingham from the East. These rates will be made on all six classes of general merchandise and will also apply to Gadsden and Attalla, two points on the Alabama Great Southern between Birmingham and Chattanooga. Following is a list showing the old rate, the new rate and the amount of the reduction per 100 pounds from Boston, New York and Philadelphia:

	1	2	3	4	5	6
Old rate.....	1.14	.98	.86	.73	.60	.49
New rate.....	1.08	.95	.84	.69	.57	.45
Reduction ...	.06	.03	.02	.04	.03	.04

Following is the rate from Boston:

	1	2	3	4	5	6
Old rate.....	1.07	.92	.83	.70	.57	.46
New rate.....	1.01	.89	.79	.64	.53	.42
Reduction ...	.06	.03	.04	.06	.04	.04

The reduction amounts to from 2 to 10 per cent., varying from \$6 to \$12 per car of medium capacity, 20,000 pounds. It is considered the most important reduction in rates that has been made in fifteen years, affecting Birmingham and the district.

President W. F. Vandiver, of the Montgomery Freight Bureau, says the bureau has secured concession of rates through the Montgomery territory which will save \$150,000 a year.

Admitting that, measured by the Arkansas statutes, they were guilty of restraining competition in farm machinery in that commonwealth, the International Harvester Company and the International Harvester Company of America have agreed to pay \$10,000 each in fines, and Attorney General Rogers brought to an abrupt close the inquisition.

CALIFORNIA

Representatives of the commercial interests of Sacramento are working with the officers of the Southern Pacific to solve the difficulty growing out of the congestion of freight at Sacramento, and it is likely that several spurs will be built immediately.

There will be no reduction in freight rates on building materials to San Francisco from the East. It is explained that reduction in rates cannot be made to San Francisco without making them applicable to all other Pacific Coast terminals. Freight Traffic Manager Sproule says: "It is out of the question to think of establishing any reduction in freight rates to San Francisco without making such reductions apply to all other Pacific Coast terminals. We cannot discriminate against Sacramento and Los Angeles in favor of San Francisco, and any reduction in rates to California terminals would disturb rates to Portland, Seattle and other northern Coast terminals. If we should put in a reduced rate on structural steel to San Francisco, you would see the United States Steel Corporation consigning shipments to Seattle by way of this city, so as to take advantage of the reduced rate. The northern lines would not stand for that. I do not see any way, under the law, to make reductions for the benefit of San Francisco that would not affect rates to all parts of the Pacific Coast, and for this reason no reductions are being considered."

COLORADO

Thomas C. Scott, traffic manager of the Colorado Manufacturers' Association, has secured a freight reduction on Colorado machinery from Denver to Australia of 50 cents per 100 pounds. The old rate was \$1.75 per 100 pounds, while the new rate is \$1.25. This reduction applies to all classes of mining machinery and was secured through the Santa Fé Railroad.

The Bessemer interests are still endeavoring to secure a freight depot for the steel works suburb near Pueblo.

DELAWARE

It is expected that the new freight yards of the Pennsylvania Railroad at Wilmington will be completed early in October.

A new steamboat line will be established between Lewes and Philadelphia and will be used for both passenger and freight purposes.

FLORIDA

The Jacksonville city council has amended the ordinance providing for the erection of freight depots and terminals for the Atlantic & East Coast Terminal Company. It is now believed to be satisfactory to the company.

The first vessel to load at Jacksonville since the city became an open port for

naval stores was the Dunkeld, of the Vogemann Line. She took aboard a cargo of 7,000 barrels of naval stores.

All port records for Jacksonville in the number of vessels and cargoes carried during May were broken. Nearly 25,000,000 feet of lumber and cross ties were shipped.

GEORGIA

A permit has been issued for the new five story terminal of the Louisville & Nashville at Atlanta. The building will cost \$300,000.

The new schedule of the L. & N. has considerably improved the facilities to freight shippers of Atlanta.

River traffic over the Ocmulgee from Macon to New Brunswick has begun.

A freight claim bureau is about to be established at Savannah.

A temporary injunction was granted by Judge Pendleton, of the Superior Court, whereby the Atlanta Terminal Company and the Atlanta Baggage & Cab Company were restrained from discriminating against other companies handling baggage at the terminal station. The decision was reversed by the Supreme Court.

Railroad Commissioner Joseph M. Brown declares that the Atlanta Journal deliberately published a falsehood in stating that marble rates in Vermont are less than they are in Georgia, and that the statement was printed for the purpose of discrediting the Railroad Commission.

The Standard Oil Company has reduced the price of kerosene oil in Atlanta one-half a cent per gallon since the city authorities granted permission to the Georgia Oil Company to construct warehouses.

IDAHO

A vigorous war is in progress for control of the Pacific & Idaho Northern Railway. I. C. Van Riper claims to have contracted for 56 per cent. of the stock of the road, but the persons of its policy and is now out for freight to him.

ILLINOIS

The Chicago, Indiana & Southern has inaugurated a new fast freight service on merchandise from Chicago to Danville.

The American Ship Building Company has secured orders for three more steel lake freighters in addition to three previously ordered. The aggregate cost of the six boats is about \$2,500,000.

The Santa Fé Railroad has changed its policy and is now out for freight business at Peoria.

INDIANA

The freight transportation officials of all the railroads in Fort Wayne, more particularly the officials who have the superintendency of the handling of freight cars, have received circular letters from the headquarters of their companies with a number of questions designed to ascertain whether the officials receiving them had in any way been unduly influenced in granting favors to shippers in the securing of cars. Similar letters have been sent to freight transportation officials all over the country by the leading railroads. These questions the officials are required to answer and return the replies.

The Indianapolis & Cincinnati Traction Company has inaugurated its freight and express service on the Rushville division.

The Munsey, Hartford & Fort Wayne freight cars are now making trips around the city loop.

The Lake Shore is erecting at Elkhart a transfer freight station 500 feet long to take care of bulk freight now handled at the Chicago yards. In the event of strikes at Chicago this station will be very useful.

Work is to be begun on the extension of the lines of the Northern Indiana from South Bend to La Porte, thus connecting with the line running from La Porte to Michigan City. The Northern Indiana controls the Southern Michigan, will have two outlets to Lake Michigan and will enter into vigorous competition for Chicago passenger and freight traffic.

KANSAS

Kansas railroads have agreed to reduce freight rates on salt. Interstate rates are to be reduced proportionately to local rates. The cuts to be made will result in an immediate expansion of the sale of Kansas salt in Missouri, Arkansas, Iowa, Minnesota, the Dakotas and Nebraska.

KENTUCKY

The city of Covington wants to regulate rates of the railroads which enter the city. Recently, when the L. & N. sought a franchise for the construction of a switch through the heart of the city to accommodate factory owners, City Solicitor Hanlon prepared a franchise ordinance which fixed absolutely the rate the L. & N. should charge for freights, not only between Covington and Cincinnati, but everywhere the road connects with other roads. President Smith is quoted as saying that the road would attend to its own rate making.

A branch freight car service office will be opened in Lexington, in charge of J. C. Loomis, on July 1.

LOUISIANA

The Planters' Steamship Company will locate its general offices in New Orleans, and General Manager H. W. Baxter will direct the affairs of the company from that city.

St. Louis, Watkins & Gulf Railway will build a new freight house at Lake Charles.

The New Orleans Board of Trade has recently been discussing the demurrage charges of the New Orleans Terminal Company on export shipments through Chalmette. No definite action has yet been taken.

The railroad companies down here now are wrestling with what is considered to be a much more important problem than stock gifts or rebates or outside ownership. The great question of what is a frog has come up, and the answers to it have split the railroad community into several factions. Pressure of the strongest kind is being brought to bear upon the Interstate Commerce Commission to postpone its present unimportant inquiry into the habits of the railroad presidents and come at once to New Orleans.

It wasn't so long ago that a frog was generally known as a frog, and except for his legs had very little standing in the community. But some genius discovered that the skin of a frog made a splendid cover for a pocketbook. It was light and tough, and could be trans-

formed very easily into lizard or other choice articles. The bayous and creeks of the State fairly teem with frogs—great big fellows, with bull voices and nice white and green union suits. Long years had made them lazy and careless, and they were an easy prey to the hunter.

In arranging the freight classifications neither the Interstate Commerce Commission nor the railroads themselves took the trouble to mention frogs, and when the first shipments were made they went out under whatever classification the freight agent cared to make. Sometimes they were sent as dried fish, at other times as birds, then again as insects or as fowl. That was all right for a time, until business grew and the shippers discovered they were paying too much freight, which was never uniform. Frog skins are about as light as anything imaginable, so they asked for a separate classification and the trouble began.

Since the railroad community has been split up over the debate they have taken to writing letters to distinguished citizens generally. None of the answers received is particularly illuminating and no two agree. The general opinion appears to be that a frog is a fish with animal tendencies, but that won't fit any place. One distinguished freight agent in Pennsylvania declared that in his opinion a frog was a bug.

Several legal decisions have been cited declaring that the frog is an animal *feræ naturæ* (wild by nature and incapable of domestication), but it is reported that the highest tribunal in New Jersey once made a similar decision concerning the oyster, but that later the ruling was reversed.

An important measure has been passed at Baton Rouge and is now ready for signature, giving consignees the right to inspect a shipment of freight before it is taken out of the freight depot. It was introduced by Representative Larche.

The measure is very likely to get the first person who attempts to exercise the right in litigation. A test of the constitutionality of the measure is sure to be made in the courts.

The friends of the bill claim that it is for the purpose of holding the litigation in this State. Under the present law, they point out, a consignee has to take a shipment of freight before he inspects it, and if it does not meet with the contract or come up to what he paid for, then he has to file suit at the domicile of the company from which the goods were purchased, whether that domicile be in New York, Chicago or St. Louis.

The Larche bill, so they claim, will give the consignees the right to inspect a shipment, and if it is not what they wanted, they can refuse it, refuse payment, and it will be up to the shipper to bring suit in the Louisiana courts for the recovery of the sum that he thinks is due.

The opponents of the bill, however, think that it seeks to regulate interstate commerce, and that just as soon as it is put in operation that it will bump up against the Interstate Commerce Act and be a dead letter.

The Circuit Court of Appeals for the Baton Rouge District has affirmed the decision of the District Court in the case of the Louisiana Railroad Commission v. The Cumberland Telephone Company, but increased the amount of the fine from \$250 to \$400, and this is the sum that the Cumberland Company

will have to pay for violation of rules of the Commission.

MASSACHUSETTS

The Old Colony Street Railway Company has inaugurated a freight service between Brockton and adjacent towns.

The Boston & Albany is having a survey made for about four miles of additional track between Hoshen and Niverville, N. Y. The new track will relieve the freight traffic congestion at Niverville, which is about fifteen miles from Albany.

The Old Colony Street Railway Company's application for a franchise to carry freight within the limits of the city of Taunton has been referred to the aldermanic committee on streets and bridges.

MINNESOTA

Business men of the east side of Minneapolis are agitating the establishment of a freight clearing house in East Minneapolis, to stop the loss of time and money attendant upon the delivery of freight to railroad stations on the west side of the river.

Rate clerks of the lines operating into St. Paul and Minneapolis are trying to readjust milling-in-transit rates from points in southern Minnesota and South Dakota to Chicago. It is proposed to advance these rates to such a point that Minneapolis millers will be placed on a more nearly equal footing with those at other milling points. The rate from Aberdeen, S. D., to Chicago, for instance, is 21½ cents. A Mankato miller can procure wheat at Aberdeen, make it into flour at Mankato and get the benefit of the 21½-cent rate. On the other hand, when Minneapolis millers get their grain, they have to pay 14 cents for hauling it from Aberdeen to Minneapolis, and pay a local rate of 10 cents from Minneapolis to Chicago. This gives the Mankato millers the advantage of a difference of 2½ cents over the Minneapolis millers.

Several cities have protested against the new tariff schedules which the Railroad and Warehouse Commission has proposed to the railroads as a substitute for the merchandise tariffs now in effect. Judge R. S. Powell, who appeared before the commission as attorney for Duluth interests, made this statement:

"A mere glance at the map shows how a distance tariff would operate against Duluth. Our shippers are now operating on a differential, and little by little are reaching out successfully to the more densely populated parts of Minnesota, as well as to other neighboring States. The proposed schedules tend to accentuate and increase these differentials, amounting in some instances to an increase in the rates which represents a fair profit on the goods themselves. If a reduction of rates is the only thing desired, I think probably that it might be effected by a horizontal reduction without disturbing the equilibrium in the relation of rates as between certain points. Such a proposal would meet with our approval."

MISSISSIPPI

A company has been organized at Columbus for the purpose of building and operating a steamboat on the Tombigbee river, in the interests of local trade.

MISSOURI

The Southwestern Freight Committee have made the following changes in rates, with St. Louis as a basing point:

Commodity rate of 80 cents a hundredweight, fourth class differential, to 79 cents a hundredweight, minimum 16,000 pounds, class A differential.

Stove boards from 79 cents, class A, to 75 cents fifth class differential, minimum 24,000 pounds.

Cast iron stoves, straight car loads, from 75 cents, class A, to 75 cents a hundredweight, fifth class differential, minimum weight 3,000 pounds.

Hollowware and stove fixtures, exclusive of enameled tin or galvanized iron articles, from 79 cents, class A, to 75 cents fifth class differential, minimum 3,000 pounds.

Minimum weight changed on airtight heaters, straight carloads, from 14,000 pounds to 12,000 pounds, 36-foot car, subject to Rule 6-B.

Roofing pitch added to item 33 committee tariff 1-A-A, ordinary rate from 58 cents a hundredweight to 36½ cents a hundredweight, with class D differential.

Axes, carload, reduced from 96 cents fourth class to 79 cents. A differential, minimum weight 30,000 pounds.

Stove pipes, stove pipe elbows, cut in shape for stove pipes (nested solid), sheet iron drip pans and roofing flanged, nested, from 79 cents class A to 75 cents fifth class, minimum weight 30,000 pounds.

St. Joseph Business Men's Club is endeavoring to have a freight depot located in the south end of the city.

In the United States District Court here the indictments against the Chicago & Alton and the Chicago, Milwaukee & St. Paul Railways, charged with granting rebates on export shipments, and against D. H. Kresky, a Kansas City freight broker, charged with conspiracy to obtain rebates for shippers, were dismissed on the motion of District Attorney Van Valkenburgh.

NEBRASKA

Charles E. Fanning, of Omaha, recently procured a mandamus to compel the Missouri Pacific to accept three cars of brick from the Burlington Railroad and place them on the team tracks at Fifteenth and California streets. The decision is of considerable importance to Omaha business men, as it is a recognition of the rule that one common carrier has no right to refuse to accept goods for transportation from another.

Mr. Fanning received the brick from Galesburg over the Burlington. In order to shorten the haul to the place he wanted to use them he asked the Burlington to deliver them to the Missouri Pacific to be placed on the team track to be unloaded. The Burlington sent the cars to the transfer tracks, but the Missouri Pacific refused to accept them, asserting it could not be compelled to place them on the team tracks. Mr. Fanning then applied for the mandamus.

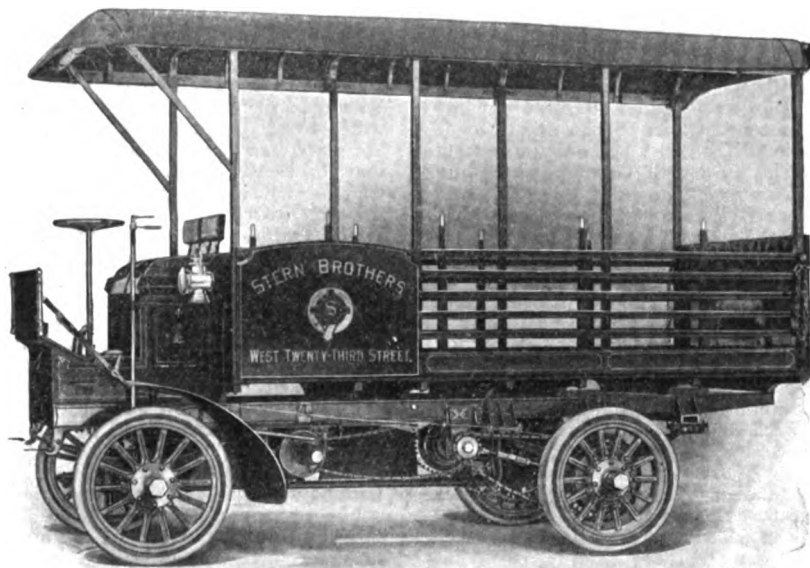
At the hearing it came out that the order not to accept the cars was given in retaliation because the Burlington had refused to accept certain cars from the Missouri Pacific.

NEW JERSEY

There has been filed in the Register's office in Jersey City record of a deed whereby the New Jersey Title Guarantee and Trust Company conveys to the

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MEMBERS A. L. A. M.

Hoboken Land & Improvement Company three hundred and five lots in the city of Hoboken and one parcel in Jersey City.

The steamship lines in Hoboken have always been placed at a disadvantage in regard to freight for the West, and it is now proposed by the Hoboken Land & Improvement Company, through the Hoboken Railroad Warehouse & Steamship Connecting Company, known as the Shore Road, which is owned by them, to establish a railroad from the Delaware, Lackawanna & Western Railroad, to run along the meadows to Nineteenth street, there to connect with the present Shore Railroad, which leads to all the steamship lines, thus affording shippers a direct connection with the North German Lloyd, Hamburg-American lines and the other lines in Hoboken.

There was also recorded at the same time an agreement whereby the Shore Road, for a period of ninety-nine years from June 13, 1906, agrees that it will charge the railroad companies connecting with its railroad, first, where shipper loads or unloads, 20 cents per net ton; second, where Shore Road loads or unloads, 40 cents per net ton, except deliveries to North German Lloyd and Hamburg-American lines, on which cars the rate is 50 cents per net ton; third, where shipment is made through freight station, 70 cents per ton, and for coal, coke and wood, \$3 per car up to 20 gross tons and \$5 per car over 20 gross tons.

Before the Newark Board of Trade recently, Chairman George W. Tomkins, of the committee on river and navigation interests, recently said: "A matter for our consideration, one which is affected by water conditions, is the question of freight rates on cement. For some time past the tariffs on Portlands to most of the freight yards in this city has been 90 cents per ton, and the tariff sheets state that the rate is named to meet water competition. The rate at the Fifth avenue yard of the Lackawanna and on the Pennsylvania Railroad, the West Newark Branch and some other points in Newark, is \$1.10 per ton. Recently an effort has been made by dealers here to have a 90-cent flat rate issued to all points in the city. The railroads are now considering the advisability of making a uniform rate of \$1.10 per ton to all city freight yards, as a satisfactory way for them to harmonize their community of interests, notwithstanding the fact that they have named and are working under an 80-cent rate to Jersey City freight yards and have in force a 70-cent rate for cement forwarded to that point for export."

New rules regarding the storage of freight will be put into effect by the Central Railroad July 2. After that date freight known as "house" will be held free of charge four days, not including Sundays, legal holidays and day of notice of arrival. Freight not removed in that time will be stored in public warehouses at owner's cost and risk, including cartage charges.

The Central Railroad of New Jersey wants to extend its terminal facilities for freights at Elizabeth. Vice President Besler said that the station would be 500 feet wide and 4,000 feet long, and that in it all freight would be redistributed and sent to New York, New England points and all Northern points. The proposed station, including the tracks, will cost between \$100,000 and \$200,000.

The new terminal will be located along the main line tracks between Seventh street and Schiller street. Seventh street is in the heart of the city and Schiller street is near the bay.

NEW YORK

The Long Island Railroad will add to its equipment two steel floats capable of carrying twenty-two cars each, and costing about \$45,000 apiece.

The Lackawanna freight house at Buffalo is very nearly completed.

The first canal freight boat to be equipped with a gasoline engine has reached Rochester.

The Joy Line Steamboat Company made the successful bid for the lease of Pier No. 28, East River, New York City, defeating the Enterprise Transportation Company.

Albany shippers have not yet succeeded in establishing an independent line between that city and New York.

The Sinking Fund Commissioners of New York have approved plans for a system of piers for the South Brooklyn water front. Most of the piers laid out are 1,400 feet long, and it is expected that the South Brooklyn section will be transformed into a manufacturing and shipping district.

The Ontario & Western will build a new freight house at Oswego. The railroads doing business in Troy have adopted the following rules:

Freight arriving at Albany, Troy, Green Island, Cohoes, Schenectady or Mechanicville, N. Y., which is commonly handled through railroad freight houses and is known as house freight, will, from and after July 1, 1906, be held in railroad freight houses free of charge for a period not exceeding six days (Sundays, legal holidays and day of notice of arrival not included). Any such freight not removed within the time specified will be stored in public warehouses, at owner's cost and risk, including expense of cartage. As it is not practicable to store property on the evening of the day of expiration of storage, the freight will be stored during the night or early the following morning. The railroad companies reserve the right to require the removal of such freight at any time after twenty-four hours from date of arrival notice when, in their opinion, it is necessary. When such freight is switched from the railroad stations to storage warehouses, the charge for switching will not be less than 2 cents per 100 pounds, with a minimum charge of 25 cents for each consignment. Under these regulations, effective July 1, 1906, any freight on hand in railroad freight houses July 1 will be considered as having arrived on that date, and will be treated accordingly. These rules do not apply on hay or straw, empty packages, bulk grain or other freight in bulk, upon which car service charges are applicable.

The Long Island Railroad Company, in line with its expressed wish to encourage agriculture on Long Island, has made material reductions in the charges for carrying stable fertilizers out on Long Island. The reductions vary, according to the distances the material is to be hauled. The new tariff went into effect on June 1. Already an increase of orders for the commodity is reported.

The barge "Geraldine" is plying between Albany and New York in opposition to the steamers of the People's and Citizens' lines.

Governor Higgins vetoed the demur-

rage bill on the ground that he considered it unconstitutional.

NORTH DAKOTA

The Northern Pacific will build a cut-off east and west of Valley City, in Barnes County. It will cost in the neighborhood of \$1,200,000. It is believed in North Dakota that ultimately the Northern Pacific is to be made a passenger road and the Great Northern is to be made the freight road.

OHIO

The Lake Shore will build the largest freight engine house in the world at Toledo.

The Dayton & Northern Traction Company has been ordered by the city to remove its freight depot from the Riverdale Levee at once.

Cleveland Chamber of Commerce has been making an inquiry into charges of railroad rate discrimination brought by the Cleveland Provision Company. Specific instances of discrimination on the part of all east and west railroads entering Chicago, Cleveland, Buffalo and New York were alleged. The general charge was that the sum of rates on live stock from western points to Cleveland, and of rates on the products from Cleveland to New York, exceeded the sum of rates to Chicago and from that point to New York, or to Buffalo and from that city to New York. The complaint is that Cleveland is discriminated against as compared to Chicago and Buffalo. The investigation is being conducted quietly.

The Ohio Shippers' Association and the railroads failed to renew their traffic agreement, which expired on June 30. The members of the conference committee were O. P. Gothlin, of Dayton; W. S. Thomas, of Springfield, and B. H. Whitney, of Toledo, for the association, and M. S. Connors, of the Hocking Valley; R. E. McCarty, of the Pennsylvania, and W. G. Bayley, of the Big Four, for the railroads.

OKLAHOMA

Merchants of Frederick are complaining of the discrimination in rates shown against Texas points by the railroads. They say that Fort Worth and Dallas are just as good markets in which to buy goods as Oklahoma and Kansas City, but that the freight rate is almost prohibitory. The Texas wholesale people are popular here, but the rates are what keep Texas out of a large per cent. of her Oklahoma trade.

OREGON

It is assumed that the St. Paul will use the Oregon Navigation for reaching Portland. The alliance of St. Paul with the Union Pacific, in opposition to the Hill roads, it is believed, will develop some interesting complications.

Baker City is to make an organized effort for a reduction of railroad freight rates by forming an association of business men.

The shippers of Portland fear a big car shortage.

PENNSYLVANIA

The Wabash has finally established a connection with the Union Railroad and the big steel plants of the Monongahela Valley. It is expected that a line to connect the Jones & Laughlin Steel Company's plants will be completed this year.

SITUATION WANTED.

An experienced Traffic Manager whose present contract expires May 1st will entertain favorable proposition, Address

TRAFFIC MANAGER,
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The Pennsylvania Railroad has decided to abolish the ten-dollar excess mileage book.

SOUTH CAROLINA

Work has begun on the new freight depot at Bamberg.

At a recent conference between the business men of Charleston and representatives of the Southern Railway, various plans were discussed for ameliorating traffic conditions in that city. The meeting was altogether harmonious, and the railroad men are to make strenuous efforts to live up to existing schedules.

TENNESSEE

It is expected that the new elevator of the Southern and the Illinois Central railroads at Nashville will be in operation by October 1.

A new freight division has been established by the Southern Railway, to be known as the Asheville traffic division, and to be in charge of A. K. Orr. The Asheville traffic division will embrace the following lines: Between Statesville, N. C., and Morristown, Tenn. (not including Statesville or Morristown); Murphy Junction, N. C., to Murphy, N. C.; between Biltmore, N. C., and Spartanburg Junction, S. C. (not including Spartanburg Junction), and Hendersonville, N. C., to Toxaway, N. C.

Rapid work is contemplated by the Nashville Terminal Company at Nashville. It is expected that the construction contracts will be finished early in August.

Suit has been begun by the State Revenue Agent James R. Jeppon against the Tennessee Coal, Iron and Railroad Company for the payment of back taxes involving about \$600,000.

TEXAS

Over twenty different railroads in the State of Texas were represented at the annual meeting of the Texas Car Service Association, held in the office of the manager, R. S. Collins, in the Kiam Building. Of the report, which was submitted to the association at the meeting by Manager R. S. Collins, the most interesting item appearing therein is the large increase in cars handled over the preceding fiscal year. The 1906 report will show that 953,496 cars have been hauled, which will show an increase over last year of 58,381 cars handled. Manager Collins says that the year ending this month has been the biggest in the history of the association. R. S. Collins was re-elected manager of the association, as was the executive committee, composed of the following members: Wm. G. Van Vleck, chairman; G. F. Hawks, Leroy Trice, T. S. Mc-

Dowell, G. F. Cotter, W. C. Nixon, L. S. Thorne and R. H. Innes.

Following the action of the Sunset Route, the International & Great Northern Railroad also has granted stopping-in-transit privileges on rice, Houston, Beaumont and other points being benefited thereby.

Notice has been received from the Southwestern Tariff Committee of the individual intention of interested railway lines to establish a reconsigning charge of \$5 per car on all lumber reconsigned after arrival at destination or at a point where ordered held, cars to be subject to regular demurrage charges in addition thereto, except that reconsigning charge will not be applied where the charge is made at planer on lumber in transit.

VIRGINIA

There has been filed at Petersburg, Va., an equipment agreement between S. D. Loving & Son, of Boston, the Seaboard Air Line Railway, and the New York Trust Company, trustee. The agreement is to sell the Seaboard Air Line Railway, for a consideration of \$2,106,150, thirty ten-wheel freight locomotives, ten ten-wheel passenger locomotives, 435 box cars and 1,000 gondolas, all to be delivered between now and October.

WASHINGTON

It is quite probable that Bellingham may be made an Alaska port of call by the Tacoma-Alaska Steamship Company.

J. H. Mitchell, of Walla Walla, is negotiating with the Spokane shippers to devote part of his time to the unearthing of overcharges in the freight bills of the shippers and the rest of his time to obtaining members for the Chamber of Commerce.

WISCONSIN

The Chicago & Milwaukee Electric Road is preparing to enter the freight business, and a special line is being built west of Waukegan to connect with Elgin and Joliet.

Milwaukee shippers have the advantage of a still further reduction in freight rates from Milwaukee to St. Louis, proper, which is directly the result of the step taken by the Wabash road in a material reduction in the bridge tolls between East St. Louis and St. Louis proper. On the 15th the bridge rates will be reduced to 1 cent per 100 pounds on the first five classes of freight, and to 1/2 cent on sixth and lower classes of freight.

The Chicago & Milwaukee Boat Line is doing first class business between the two cities, and has opened general offices in Milwaukee.

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PERSONAL MENTION

BRADFIELD.—J. P. Bradfield has been promoted to the general management of the New York Central lines, in place of A. H. Smith, who has been made vice-president.

BURNS.—M. D. Burns, freight agent of the Lackawanna at Ithaca, has resigned to go into the real estate business.

CURRAN.—R. J. Curran has been appointed general agent of the Nashville, Chattanooga & St. Louis in Louisville.

CROWLEY.—P. E. Crowley has been appointed general superintendent of the New York Central, in charge of freight traffic west of Albany.

FINNEY.—F. M. Finney has been elected president of the Missouri, Kansas & Texas.

FITZGERALD.—E. Fitzgerald has become traveling freight agent of the Santa Fé, with headquarters at Tulsa, I. T.

GOULD LINE CHANGES.—B. M. Flip-pin, assistant freight traffic manager of the Gould lines, the Missouri Pacific-Iron Mountain, announces the following changes: H. B. Kooser, general agent, freight department, Dallas, vice C. A. Waterman, commercial agent, transferred to Pueblo; H. C. Post, general Western freight and passenger agent, Denver, vice H. B. Kooser, transferred; E. M. Gannon, general agent, freight department, New Orleans; Charles Rip-pin, general agent, freight department, Memphis, vice B. G. Sargent, commercial agent, resigned; C. E. Wagar, commercial agent, Atchison, vice E. M. Gannon, transferred.

PRIDE.—J. A. Pride, assistant general freight agent of the Seaboard Air Line, has been in Chattanooga establishing a freight office in that city.

PRUITT.—O. M. Pruitt, who presented the petition of a number of Indiana shippers to the State Railroad Commission for a revision of the car service rules, is president of the Indiana Veneer & Lumber Company. He has no connection with the Indiana Car Service Association.

SKILLEN.—J. H. Skillen has been made commercial agent of the Chicago, Milwaukee & St. Paul at Buffalo.

SMITH.—Charles F. Smith has been made general superintendent in charge of traffic east of Albany and passenger traffic over the entire New York Central lines.

TAYLOR.—Howard W. Taylor has been appointed freight solicitor for the Pennsylvania in Philadelphia, vice Wilmer M. Wood, resigned.

WHITESIDE.—W. H. Whiteside, president of the Allis-Chalmers Company, accompanied by his wife and daughter, has gone abroad for a few weeks' recreation.

WISCONSIN CENTRAL CHANGES.—Burton Johnson, general freight agent of the Wisconsin Central at Milwaukee, announces the following changes: G. H. Anthony, who has been general agent at Duluth, Minn., has been transferred to Winnipeg, Manitoba. Mr. Anthony is succeeded by V. L. Freeland, formerly general agent at Cincinnati, Ohio. C. K. Landes, formerly general agent at Detroit, Mich., has been transferred to Cincinnati. Mr. Landes is succeeded at Detroit by W. D. Van Schaack, formerly New England agent of the road, with headquarters in Boston, Mass. M. J. Naughton has been appointed successor to Mr. Van Schaack.

HEARINGS AND RULINGS BEFORE STATE COMMISSIONS

FLORIDA

The Railroad Commission has notified the Seaboard Air Line Railway that the complaint of the McDowell Crate & Lumber Company, of Marion County, against that railway, for alleged refusal to transport lumber from Oak to Jacksonville, will be considered at a hearing to be given in Tallahassee July 2.

GEORGIA

A decision in the case of the Atlanta Stove Works against the Atlanta & West Point, the Seaboard Air Line, the Louisville & Nashville, the Atlantic Coast Line and Southern Railways, in which the plaintiff prayed for an order forcing the defendants to carry freight at the rates prescribed by the railroad commission, was handed down by Judge Pendleton in Superior Court, and the petition of the plaintiff was granted. It was agreed by counsel that only one case, that of the Southern Railway, would be appealed to the Supreme Court on a writ of error as a test case, and the others will be held up pending the decision of the higher court in the matter.

Upon the urgent request of the Retail Marble Dealers' Association of Georgia, the railroad commission has deferred the question of freight rates on marble from the North Georgia quarries to August 8.

The petition of the Atlanta Freight Bureau for a reduction in rates on fertilizers from Savannah and Brunswick to Atlanta was taken up. Col. W. L. Peel and Harry Moore, of the Atlanta Freight Bureau, were present in the interest of the proposed reduction, while the railroads were represented by the following: W. E. Estes, general freight agent of the Central; James Menzes, assistant general freight agent of the Coast Line; A. Pope, assistant general freight agent of the Seaboard; G. R. Browder, general freight agent of the Southern; C. D. Boyd, general freight agent, and C. W. Bradshaw, superintendent of the Louisville & Nashville. Decision was reserved.

ILLINOIS

Final reductions in State freight rates have been agreed upon by the State Railroad and Warehouse Commission.

The final order of the commission makes a 10 per cent. reduction on the sixth class and 8 per cent. reduction on the seventh class, material reduction being made on the eighth, ninth and tenth classes. A 10 per cent. reduction is made on wheat, grain, lumber, salt, coal and hogs.

The matter of reduction in freight rates was brought before the present commission several years ago by the Quincy freight bureau and other shippers throughout the State.

Several months ago, after much evidence had been taken, the commission announced that a general reduction of 20 per cent. in freight rates would be ordered.

The railroads contended that such a reduction would be ruinous, and as a result a large force of expert accountants were employed by the commission to ascertain, if possible, what the exact average rate was in Indiana and Iowa, the two States which were used in making comparisons with the Illinois rate.

The schedule of maximum rates an-

nounced is based on the figures prepared by these experts.

Besides the articles and the commodities mentioned, the new rates will make a 10 per cent. reduction on all agricultural implements, machinery, engines, boilers, windmills, pumps and other articles used by the farming classes, and also on sugar, coffee, cereal products, soaps and many other articles used in daily consumption.

INDIANA

Coal freight rates charged by the Southern Railway out of New Albany have been ordered reduced in a decision handed down by the State Railroad Commission. They affect almost every town on the Southern Railway in Indiana, and the reduction awarded is considerable. The complaint against the Southern was filed by E. T. Slider, of New Albany, who charged in addition to excessive rates that the company charged higher rates for hauling east-bound coal than for that with a western destination.

The following reductions were made: From New Albany to Duncan or Georgetown, from 50 cents to 35 cents; to Corydon, 70 cents to 55 cents; to Milltown, 70 cents to 55 cents; Marengo, 80 cents to 60 cents; English, 80 cents to 65 cents; Huntingburg, \$1 to 70 cents; Oakland City, \$1.20 to 85 cents; Jasper, \$1.10 to 70 cents; Rockport, \$1.20 to 85 cents; Boonville, \$1.20 to 85 cents.

Union B. Hunt, chairman of the commission, wrote the finding, and in regard to the second charge, to the effect that the rates in different directions were different, held that the company had a right to charge unequal rates if the conditions and expense of handling in different directions were various.

KANSAS

In spite of the announcement that insistence on the part of the smaller towns in Kansas on enjoying jobbers' rates the same as the large shipping points might mean the withdrawal of jobbers' rates from all Kansas points, George W. Hanna, Mayor of Clay Centre, appeared before the board of railroad commissioners and asked that his town be given the benefit of jobbers' rates.

The railroad board has no power to order the railroads to grant such concessions to Clay Centre. If the roads do so without an order, in all probability the board would make no objection, although such proceeding would be in direct violation of the Kansas railroad law. However, it is practiced in other parts of the State, and the railroads will be permitted to do as they please in regard to Clay Centre. Mr. Hanna appreciated the fact that the board is powerless to order such rates, but asked that, if Clay Centre could not be given the benefit of jobbers' rates, that such rates to all other towns be canceled.

KENTUCKY

The State Railroad Commission, which for months had under consideration the regulation of all freight rates charged by railroads operating in the State on interstate business, has announced, in a lengthy opinion, a reduction of 25 per cent. on the mileage scale of the Louisville & Nashville Company. This reduction is ordered on the main stem of

the Knoxville Division and Cumberland Valley Division of the L. & N. to bring it down to the Kentucky Central Division scale, which is in competition with the C. N. O. & T. P. Co. Taking the L. & N. as a basis, the commission brings all other roads operating in the State to the same schedule of rates. The ruling of the commission affects all companies in a minor way, but mainly affects the Illinois Central Company, whose local rates on short hauls are even higher than those of the L. & N. Company.

A representative of one of the largest railroads in the State makes this statement: "The decision of the commission is astounding and revolutionary. I do not know what will be done."

LOUISIANA

The Railroad Commission has issued the following orders:

Railroad companies, except for reasonable cause of delay, to establish which the burden of proof shall be upon the carrier, must furnish cars to shippers, suitable for the transportation of the freight desired to be shipped, at a designated place for loading, if possible, otherwise at the most convenient point nearest shipper's loading place, within five days after written notice to the agent of the company, at the nearest station to said loading place; provided, the said notice shall be in writing and shall show name of shipper, character and destination of the freight, and to be accompanied by a deposit of \$5 for each car ordered, which amount shall be returned to the shipper immediately upon demand upon the agent, after loading the car or cars, or applied to the payment of the freight, as the shipper may elect. Provided further, that no shipper may, under this order, demand more than two cars for each period of five days.

Whenever a shipper in Louisiana desires cars for the purpose of shipping perishable freight, such as ice, green vegetables and other articles requiring prompt transportation, it shall be the duty of railroad companies to furnish one car every forty-eight hours, after receiving forty-eight hours' written notice, accompanied by a deposit of \$5 for each car ordered, as provided in section 1.

Companies failing to furnish cars within the specified time, except for reasonable cause of delay shown by the carrier, shall pay to the person making a demand for cars, as provided by sections 1 and 2, a demurrage charge of \$1 per day for each day or fraction thereof, exclusive of Sundays and legal holidays, to be computed from 7 a. m. of the fifth day after demand made in the manner and form as provided by section 1.

The demurrage in such cases assessed against the carrier shall be paid by the agent at the depot, where notice for cars is given, within thirty days from the filing of claim.

After the car or cars ordered have been placed in position for loading, the person applying for the same shall load the car or cars within forty-eight hours, and, upon failure to do so, shall forfeit and pay to the railroad company a demurrage charge of \$1 per day for each car not loaded within the time above specified.

The demurrage in such cases assessed against shipper shall be retained from the amount deposited with the agent at the time the order is given for cars.

These rules shall apply only to box, flat stock and coal cars of usual and ordinary dimensions. Railroad companies shall not be required to furnish cars of special design.

Whenever there is a conflict between class and commodity rates, or between mileage rates and commodity rates, for the transportation of freight between any two points in Louisiana, the lowest rate in effect shall be charged.

All railroads entering New Orleans shall charge no more than 6 cents per 100 pounds from plantation points to New Orleans on "black strap" or "centrifugal thirds" molasses, provided the shipper shall furnish to the railroad company a certificate showing the grade of the molasses.

All steamboats operating between Monroe and New Orleans shall be allowed to charge the lowest authorized railroad rates between the two said points less a differential of 3 cents per 100 pounds on classes 1, 2 and 3, and 2 cents per 100 pounds on all other classes, to equalize the drayage from and to the levee at Monroe, and on account of the service by boat being occasional, while the railroad service is daily.

MISSISSIPPI

The Mississippi Railroad Commission has received a letter from Vice President Whittelsey, of the Mobile, Jackson & Kansas City road, in reference to the complaint recently filed that the passenger coaches on the system are inadequately lighted. Mr. Whittelsey states that a supply of coach lamps was recently ordered and they will be installed within a few days.

A red hot complaint has been filed against the Sardis & Delta road, a logging line running southwesterly from Sardis. T. J. Yarbrough states that President R. M. Carrier refuses to make him a freight rate on logs out from three sections of land located adjacent to the company's line; that President Carrier says he is willing to handle the logs if sawed into lumber, at the rate of 12 cents per hundred, which is so high that he would not be able to sell the product; that Mr. Carrier has offered to buy the timber, and made him an offer for same, but the offer is about 50 per cent. of what he is able to obtain for lumber cut from property adjacent to the Illinois Central tracks at Sardis. He insinuates quite plainly, that the president of the railroad is giving him "squeeze" treatment, and he asks the railroad commission for the proper relief.

MISSOURI

Missouri railroads have secured a temporary injunction from the United States Circuit Court, restraining the railroad commission from enforcing the maximum rate law. Burlington figures show how severe it is.

Under the rates prescribed in the new law, Burlington's earnings on certain commodities would be reduced from \$526,532 to \$355,410, or 52.49 per cent. Live stock revenue would be reduced from \$373,372 to \$233,060, a decrease of \$140,302. Grain revenue would be reduced from \$73,609, received last year, to \$57,825, a loss of \$15,784. Burlington's total traffic in Missouri last year amounted to \$1,640,665, while its interstate traffic originating in Missouri amounted to \$6,735,454.

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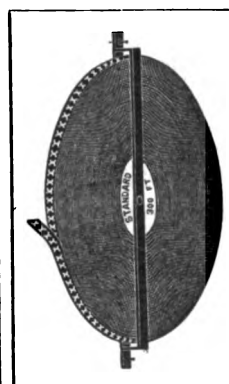
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Other lines are similarly situated. They argue that it is unjust to throw upon their interstate traffic the burden of making good the losses on State business by unremunerative rates.

NORTH CAROLINA

C. J. Field, secretary of the North Carolina Case Workers' Association, of High Point, before the corporation commission, asked for a change and reduction in freight classification of veneering woods.

Representatives of Seaboard, Southern and Coast Line railways appeared and objected. The commission will decide later.

Traffic managers of above mentioned roads filed application for the adoption of the Southern classification, with such exception sheet as the commission sees fit to make, and further asked that minimum carload on fertilizers be 30,000 pounds instead of 20,000, filing comparison sheet, which, they claim, shows the Southern classification gives more reduction than increases.

The commission will compare these various classifications.

TEXAS

Chairman Storey, of the Railroad Commission, filed his opinion dissenting from the action of the majority of the commission in adopting a 2½-cent passenger rate on the Houston & Texas Central. It is as follows:

Office of the Railroad Commission of Texas, Austin, Tex., June 1.—In cause No. 643: The Railroad Commission of Texas, on the 23d and 24th days of May, heard and took under consideration a proposition, proposed by the commission itself, to reduce the adult passenger fare on the Houston & Texas Central Railroad from 3 to 2½ cents per mile; and on the 30th of May a majority of the commission adopted and promulgated an order so reducing the passenger fare on that railroad from 3 to 2½ cents per mile, effective July 1, and against this action of the commission I respectfully dissent, for the following reasons:

1. It is admitted by a majority of the commission (Mayfield and Storey) that we could not and should not attempt to enforce such an order if made applicable to other roads in this State.

2. I believe, as between the Houston & Texas Central Railroad and other competing lines, this reduction is an unreasonable, unjust discrimination, forbidden by the Constitution and laws of Texas.

3. As between the patrons of the various roads leading into competitive points on the Houston & Texas Central Railroad, this difference of ½ cent per mile on that road is an unjust and unreasonable discrimination against the patrons of the other roads.

4. I agree with at least one of the other commissioners that our authority to make this order is not given by Section 4 of Article 4562 of the Revised Statutes, authorizing the commission to make different rates on different roads or for different parts of the same road, as that section is believed to apply only to freight rates, and that our authority to make different passenger rates on different roads, if it exists at all, must be found in Section 11 of said article, which reads:

"Section 11. The commission shall

make and establish rates for the transportation of passengers over each or all of the railroads subject thereto, which rates shall not exceed the rates fixed by law. The commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto."

5. This section must be construed with the first part of said Article 4562, which provides that "the power and authority is hereby vested in the Railroad Commission of Texas, and it is hereby made its duty to adopt all necessary rates, charges and regulations to govern and regulate freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction."

6. Other articles of the Railroad Commission act forbid and prescribe penalties for extortion and discriminations, and if I am correct in my conclusion that this reduction on a single road is an unreasonable discrimination, it is incomprehensible that the mere fact that it is ordered by the commission could relieve it of its discriminating features. We have no authority to make an unreasonable discrimination.

7. The effect of this order will compel all other competing lines to either go out of the passenger business or meet this cut rate on the Houston & Texas Central Railroad, even though their greater distance between competitive points will in fact earn them less than 2½ cents per mile. They are compelled under the law to run these passenger trains, pay or no pay, or, in the language of the law, run some train "upon which passengers shall be hauled."

Shall we retain the service of these regular passenger trains on competing lines now operated at less than 3 cents per mile in order to compete with the shorter line of the Houston & Texas Central Railroad, or will we, by order of the commission, drive them out and compel these lines to substitute the mixed passenger and freight train? The question is a serious one. These other lines, such as the Missouri, Kansas & Texas of Texas; the Gulf, Colorado & Santa Fé; the International & Great Northern; the San Antonio & Aransas Pass, and others, must meet this cut rate between competitive points or go out of the passenger business.

To meet this reduction means a serious sacrifice of needed revenues to enable them to render to the public the ample and efficient service it demands and to which it is entitled.

It is no answer to say that the Houston & Texas Central Railroad can stand the reduction, if indeed it is so. We should not, for the sake of a reduction on the Houston & Texas Central Railroad, force upon other competing lines an unjust and unreasonable reduction, which must of necessity cripple their efficiency and injure the public.

8. In view of the fact that it is admitted that we could not justly apply this order to any other road in Texas than the Houston & Texas Central, but can in this indirect way force these other competing lines to accept, adopt and meet this 2½-cent rate or do worse, we cannot console ourselves or convince the people of Texas that the reduction on these other roads is a voluntary act on the part of said other roads.

THOS. C. MOORE

FREIGHT TRAFFIC MANAGER

405

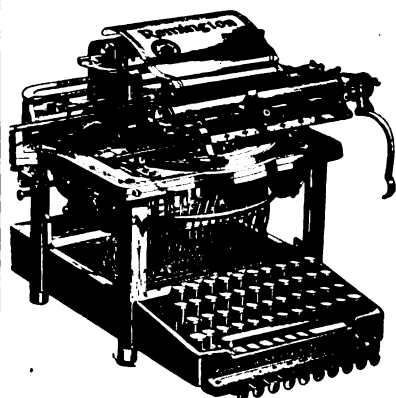
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By this order they are compelled to choose the least of two recognized evils—evils to them, and, in my judgment, greater evils to the people of Texas.

9. None of the lines affected by this order are paying dividends to their stockholders, and none of them but what need more than their present net earnings to enable them to improve their roadbeds, rolling stock, depots and other necessary improvements, and to enable them to render better service to the people of Texas.

10. If it is right to force a reduction of the passenger fare on these other roads, we should have shouldered the responsibility ourselves by a direct order to them by name, and not attempt to deceive ourselves with the idea that they voluntarily reduced their earnings.

Very respectfully,

L. J. STOREY,
Chairman.

VIRGINIA

The corporation commission commenced its hearings early in June on the new schedule of freight rates formulated by that body for the State of Virginia. Every railroad in the State was represented by its leading counsel and some of its officers. The two leading witnesses thus far have been H. B. Spencer, general manager of the Southern Railroad, and H. B. Plant, comptroller of the same road. Mr. Spencer, who is a son of President Samuel Spencer, proved an almost inexhaustible fund of precise information, and without hesitation answered all questions as to mileage in the various States and the cost of operation. He gave a brief outline of the scope of the road, with the principal cities on its lines, and especially the characteristics of the various branches in Virginia, and declared it took 70 cents to earn \$1 on the entire system. 1905 was a good year, and the receipts and expenditures were large.

A. C. Braxton, special counsel for the State, in cross-questioning Mr. Plant, brought out the fact that Virginia is charged with outside expenses.

He also, by the same means, showed that while Virginia is charged with all the expenses incurred within its borders, it is charged with one-eighth of the expenses of the road in other States.

Mr. Plant's replies were technical. To some he pleaded want of information. Others he declined either to deny or affirm.

Mr. Plant, while giving a considerable part of the information desired, said that, in regard to the other questions, especially those relating to money received by the company for stock sold, no definite answer could be given, as he knew of no papers left by the organization committee giving such figures.

CANADA

The Railway Commission will assume the regulation of express rates, an amendment of the Railway Act having been agreed upon at Ottawa.

The annual convention of the American Association of Local Freight Agents met at the Windsor Hotel, Montreal, and adjourned on June 21, to meet at New Orleans next year. The following officers were elected: President, W. W. Alexander, of the Louisville & Nashville Railroad, Cincinnati; vice president, W. P. Martin, of the Canadian Pacific Railway, Montreal; treasurer, C. E. Fish, of the Baltimore & Ohio Railway, Cincinnati; secretary, C. W. Dennison, of the

Pennsylvania & Hocking Valley Railroad, Toledo. During the business session the Cincinnati delegation strongly presented the advantages of weighing carload freight under the rules of the Cincinnati Chamber of Commerce. It was argued that these rules stopped the friction and complaints caused by incorrect weights, have resulted in obtaining actual weights of all carloads, to the satisfaction of both the shipping public and the railroads, and have saved many claims. This was referred, after full discussion, to the conference committee, which is a permanent committee in close touch with the various railway executives, and confers with them from time to time on the various improvements in the working of railroads that may come before its notice. The Springfield delegation presented a report on "The Use of Registered Tracer," an ingenious device for keeping track of all freight shipments. The adoption of the standard form of tracer was indorsed by the convention as in the interests of both public and carriers, and the report was also referred to the conference committee. A proposition was made that the records of the nineteen conventions held by the association should be compiled in volume form, as it would make a practical compendium of railway work and improvement along freight lines during that period. This was referred to the executive, with power to act.

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Demand for American Goods in Foreign Markets

(These reports are collected from a number of sources, all of which are believed to be thoroughly reliable.)

The importation of foreign cotton goods at Hankow, China, declined nearly 14 per cent. during 1905. The exceptions in piece goods of any moment were British jeans, British and American sheetings and the smaller items of Japanese and Indian T cloths, Japanese handkerchiefs, towels and cotton cloth. Hankow is deemed one of the best points in China in which to sell American goods.

An excellent market for American dress specialties has been opened in Brazil, and especially in Rio de Janeiro. The Brazilian women adopt the latest fashions from Paris as quickly as the women of the United States. There are tariff difficulties to be encountered, but they can be overcome. Business letters to Brazilian houses should be written in the Portuguese language.

There is a demand in Italy for gas engines and motors. Gas power engines are being introduced very largely in mills and factories.

Germany offers a good field for American dental graduates, particularly those who are conversant with the German language. In the province of Saxony, with a population of nearly three million people, there are only ninety practicing dentists.

There is a great deal of trolley line development in Australia. In Victoria many of the suburban municipalities have the construction of lines under consideration. Manganese and decarbonized steel and copper or motor wire are not manufactured in Australia. The larger part of these supplies come from America.

The canning trade is beginning to make some headway in Turkey, and eventually there will be a demand for can making machinery.

There is a demand for portable houses in Panama. The lack of carpenters, ex-

orbitant rents, and the difficulty of obtaining suitable apartments has caused considerable inquiry for the movable house.

In Uruguay there is a considerable demand for shoes, particularly women's shoes. The slipper trade is a very important branch of the business in that country. It is suggested that a campaign of education among the women of the country, in the matter of footwear, while not absolutely certain to succeed, if it did succeed would be very profitable. There is a demand for canned fish, oysters, lobsters, sardines and other food products.

A market for American cotton goods is being developed in Asia Minor, and it is believed the field will soon offer exceptional opportunities to exporters of cotton textiles.

Among the goods needed in Guatemala are breadstuffs, beverages, cottons, machinery, agricultural and laborers' tools, paper, unmanufactured leather and chemicals.

The mail order system is being used to advantage by sellers of American goods in Mexico. Of course, the circulars and catalogues are useless unless they are written in correct Spanish. Too many of these American catalogues are written apparently by graduates of a two months' course in a language academy, which simply makes them ludicrous.

It has been suggested that the styles of shoes worn by the Chinese can be made in the United States and sold in successful competition with the hand made product of the natives. It is estimated that the lower classes expend about \$1.50 American money per capita per annum for shoes, while the expenditure of the upper classes varies from \$3 to \$10 per annum. With a population of four hundred million, China would seem to present an inviting field.

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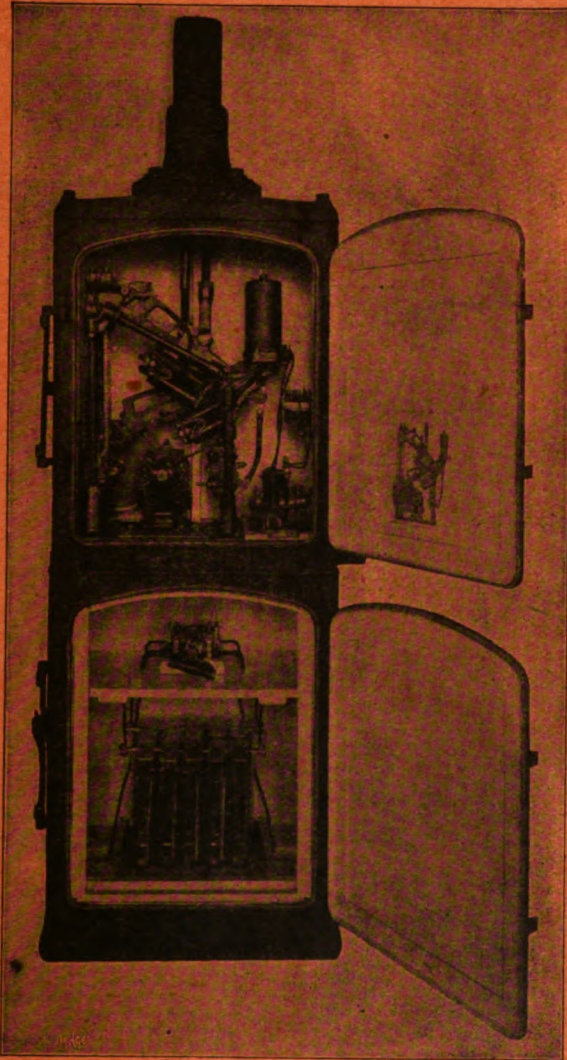
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An Analysis of the Carmack Amendment

BY GEORGE E. WEST

By the enactment of the Carmack amendment concerning the liability of carriers for loss and damage Congress, for the first time, has legislated on this subject concerning carriers by rail. As early as 1871 an act was passed concerning the liability of carriers by water, and this has been supplemented by several laws. Carriers by water, according to the statutes, are not liable for valuable articles unless at the time of shipment the vessel receives written notice of the true character and value of the articles, and the same is entered on the bill of lading. A vessel owner is not liable for loss and damage which happens to merchandise received on the vessel by reason of any fire, unless the fire is caused by the design or neglect of the owner. If, by reason of embezzlement, loss or destruction, goods on board a vessel are lost or damaged by collision or otherwise, without the knowledge or consent of the vessel owner, the amount which can be recovered from the vessel owner is not to exceed the interest of the owner and the freight; the law makes provision for general average in this and appropriate cases.

Is the Harter Act Repealed?

In 1893 Congress passed the so-called Harter Act, by which it was declared that it should be unlawful for the owner of a vessel transporting merchandise between the ports of the United States and between the United States and foreign countries, to limit their liability, by which they should be relieved from loss or damage arising from faulty loading, stowage, custody, care or delivery of the property; by which vessels engaged in such commerce must be properly equipped and manned; by which the vessel owner shall exercise due diligence in respect to the seaworthiness and proper manning of the vessel; by which he shall not be liable or held responsible for damage or loss resulting from errors of navigation or losses arising from the dangers of the sea, acts of God or the public enemies, or from the inherent defect, quality or vice of the goods transported, or from faulty packing, or for loss resulting from any act or omission of the shipper or owner of the goods, or as a result from attempting to save life or property at sea; by which a bill of lading must be issued by the shipper stating the goods transported and the other usual statements

concerning the shipment; by which, if a vessel violate the provisions of the law, it shall be liable to a fine not exceeding \$2,000, half of which is to go to the party injured and the balance to the Government of the United States. This Act of 1893, by special provision, is not to repeal the earlier Act of 1871.

Under the Carmack amendment it is proper to inquire first what parties are governed by it. It applies to "any common carrier, railroad or transportation company." It is possible that the term transportation company may be held to include shipments by water; if so, the provisions of the Harter Act may, to the extent of the recent law, be repealed. The amendment will apply only if the carrier is "receiving property for transportation from a point in one State to a point in another State." By the law it becomes the duty of the carrier to "issue a receipt or bill of lading" for the shipment.

Initial Carrier Responsible

Having issued such a bill of lading, the carrier is liable to the lawful holder of the bill of lading for any loss, damage or injury to the shipment, if such loss, damage or injury is caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass. It seems reasonably clear that the carrier which first receives the property for transportation beyond the terminus of its line is not only liable for the loss and damage to the property, if any occur, if the loss and damage be "caused by it." The initial carrier is not only held liable under the amendment for loss or damage "caused by it," but also for loss or damage caused by any connecting and subsequent carrier. The party to whom the carrier is liable is the lawful holder of the bill of lading. This would appear to designate the party plaintiff in a suit brought to recover for the loss and damage. Under existing commercial conditions such an one might be the consignor, or a bank by whom a draft to which was attached a bill of lading had been discounted, or the bank at destination, if the relation between the two banks be such that the bank at destination can be considered the lawful holder, or the consignee, or a bank with whom the consignee has hypothecated the bill of lading.

It is prohibited to common carriers, railroads or transportation companies, by contract, receipt, rule or regulation, to exempt themselves from the liability imposed by the amendment. It is the custom in certain States, formerly more prevalent than now, for the carriers to promulgate a rule by which the liability imposed by law was limited. Many courts hold that such a notice was not a sufficient one; others hold a contrary doctrine. In the latter case the carriers required a special contract, by which, either through the acceptance of the document or by signing the bill of lading, the shipper and his assigns were held in such way as to relieve the carrier from its liability.

Constitutionality of the Law

It has been hinted that the amendment is unconstitutional. For a final determination of this the courts must be invoked, for the point has never been directly decided. It has been decided, however, that Congress had power to pass a law concerning the limitation of liability of owners of vessels, and in that case the court, speaking of the old Act of 1851, said: "We have no doubt that Congress had power to pass the law. It is only a maritime regulation in its character, but it is clearly within the scope of the power given to Congress 'to regulate commerce.'" If the amendment be unconstitutional, it can only be declared such upon the broad ground that one person cannot be held liable for the acts of another. The reply given to this is, of course, that if, under a bill of lading, an initial carrier engaged in interstate commerce undertakes to transport property from a point in one State on its line to a point in another State on the line of another carrier, it, the initial carrier, brings itself into the purview of the commerce clause of the Constitution. The power of Congress under the commerce clause of the Constitution to make rules or regulations concerning the manner or mode by which such commerce shall be conducted is plenary. While it may be mooted under all the decisions whether Congress has power to name rates for transportation, there is no case which hints that Congress does not have the power to say either upon what conditions one may undertake to engage in interstate commerce or prescribe the rules and regulations by which one thus engaged shall be governed. If Congress can, by enactment, state the liability which vessel owners engaged in interstate and foreign commerce shall be subject, it is difficult to see why Congress has not power to regulate land transportation as it may see fit.

Various State Laws

Several of the State Constitutions and statutes make provisions for the liability of carriers. Georgia requires that the express consent of the consignor shall be given to a contract by which the carrier's liability is limited. Iowa has a statute which provides, "in the transportation of persons or property by railroad or other company or by any person or firm engaged in the business of transportation of persons or property, no contract, receipt, rule or regulation shall ex-

empt such railroad or other company, person or firm from the full liability of a common carrier which, in the absence of any contract, receipt, rule or regulation, would exist with respect to such persons or property." A statute of Illinois prohibits a carrier to limit its common law liability safely to deliver the shipment at the place to which it is to be transported by any stipulation of limitation expressed in the receipt given for the shipment. In Texas a statute provides that common carriers shall not retract their liability as it exists at common law. The law of South Carolina provides that no public notice or declaration or special contract shall limit the liability at common law of any railroad company within the State. The Constitution of Kentucky prohibits common carriers from contracting for relief from its common law liability. And the Constitution of Nebraska provides that the liability of railroad corporates as common carriers shall never be limited.

It is to be noted that the State provisions refer to the limitation of the initial carrier, and in no wise attempt to make it responsible for loss or damage occurring upon the lines of subsequent carriers.

The Courts Will Probably Determine

It will probably require the interpretation of the courts to determine to what shall be attributed loss and damage. The language of the statute is "caused by it" (the common carrier, railroad or transportation company). Manifestly, if the loss or damage be caused by the officer, agent, servants and employes, such would fall within the term "caused by it." But must the act of the corporation and its servants be the proximate cause of the loss and damage? If the acts of the carrier are remote and not the direct cause of the damage or loss, can it be held? If there be a wreck which is determined an unavoidable accident and goods are destroyed, can the shipper recover? If there be a strike, due to the refusal of the carrier to increase wages, and shipments be lost or damaged, is the carrier to be held liable in such an instance? If a flood overtake a shipment or a fire due to accidental or unknown causes destroy a shipment, is the carrier bound?

Again, when does the liability of the carrier begin and terminate? Manifestly it cannot begin until the bill of lading has issued. Shall it terminate when the property is ready for delivery to the consignee, or shall it extend over the free time for unloading or removal?

The amendment probably does not prohibit a carrier from making a regulation by which a claim for loss and damage must be made within a specified and perhaps a short time. Nor, in all probability, does it prohibit a carrier from requiring the value of the shipment to be stated and to exact an increased rate if its financial liability is to exceed a certain amount.

This and many other questions are to be determined by the courts. The value of the law is to be determined largely upon the method in which it shall

be executed. To paraphrase the language of the Supreme Court in a similar case, if the courts having the execution of it administer it in a spirit of fairness, with a view of giving to the carriers and shippers the full benefit of the provisions intended to be secured by it, the encouragement it will afford to commercial

operations will be of lasting importance; but if it is administered with a tight and grudging hand, construing every clause most unfavorably against the carrier or shipper, and letting as little as possible to operate in their favor, the law will hardly be worth the trouble of its enactment.

How to Proceed Before the I. C. Commission

BY JOHN B. DAISH

It has been predicted that when the rate law of 1906 shall become effective (August 28 next) there will be a large number of complaints filed with the Interstate Commerce Commission. It is generally supposed that, by reason of the increased field to which the statute has been made to apply, as well as by reason of the increased powers given to the Commission, there will be a considerable number of complaints filed by individual shippers on behalf of themselves, by organizations on behalf of localities or on behalf of commodities which they represent. Such being the possible action or perhaps the desired action, it may be of interest to consider how cases are brought to the attention of the Commission.

No New Rules of Practice

While it is understood that at present there will be no new rules of practice, yet there will doubtless be some changes made necessary by the new law. Heretofore, after complaint had been filed, or perhaps contemporaneous with the filing, it has been denominated either formal or informal. It is often difficult to draw the line between these two classes. The informal complaint is generally one of less value, not so broad in its effect, and frequently brought to the attention of the Commission by a letter alleging unjust treatment of the shipper or the commodity in which he deals, or the locality where he resides. Not infrequently such matters are arranged by correspondence, the Commission assuming the position of mediator between the shipper and the carrier. These complaints at times are in the nature of claims, at others relate to some practice, at others relate to a rate. Through this class of complaints, the Commission has in the past secured a correction of a large number of abuses.

The formal complaints are not so numerous as the class just mentioned, but differ more in amount, or involve important principles, or are more far reaching in their effect than the informal complaints. To file a formal complaint one needs to file a petition or complaint. What this should contain and the form in which it should be written we shall see later.

Character of Complaints

Before filing a complaint, one who deems himself aggrieved should ascertain certain things. He can complain to the Commission at least under two broad headings. First, for a violation of the law, seeking

a criminal prosecution. In this connection we mean the law to regulate commerce as it appears upon the statute books. The Interstate Commerce Commission has no jurisdiction to enforce the common law relating to carriers as that term is understood in the several States or under the common law of the United States, if such there be. One may complain of a carrier or number of carriers, alleging a violation of the act to regulate commerce and seek to have them prosecuted under the Elkins Law. If there be sufficient evidence to show a violation of the Interstate Commerce Law, and the violators have done such acts as bring themselves within the purview of the Elkins Law, it is the duty of the Interstate Commerce Commission to seek a prosecution through the Department of Justice. Such a prosecution is a criminal one, and the convicted offender is, under this law, subject to a fine and imprisonment. It should be remembered, however, that the law does not now make imprisonment the penalty for all violations of the Interstate Commerce Act. One making such a complaint becomes practically a complaining witness. A complaint of this nature is hardly considered in every case a formal one. The case may be of such nature as may require the Commission to take testimony to see whether or not the charges made are substantiated. If so, the evidence is transmitted to the Attorney-General, who, through the machinery of his department, seeks an indictment of the alleged offenders.

Seeking Damages or Correction of Abuses

For a violation of the Interstate Commerce Act of 1887, as amended, formal complaints not seeking criminal prosecution may be of broad lines. First, those in which the aggrieved person seeks to secure damages for past wrongs and requests the Commission to award the payment of a sum of money. This class of complaints need not necessarily contain only such allegations as will support a claim for damages. They may be combined with another class and look to the correction of abuses in the future as well as for payment of damages for wrongs committed in the past. These complaints frequently grow out of alleged unreasonable rates or alleged undue discriminations in the furnishing of equipment. Second, those which look to the correction of transportation abuses. This class is divisible into two heads. First, those seeking a correction of alleged unreasonable rates, and second, those seeking a correction of alleged unjust practices.

It has been said that there are very few rates unreasonable in and of themselves; that where rates are unreasonable, they are only such because of the relation of rates. No general rule can be laid down with respect to practices. If one consider that, by reason of some order, regulation or custom of a carrier he is discriminated against, he may allege that this constitutes an unreasonable or unjust practice, and he may secure an order requiring the carrier to change such a practice.

Thus we see that complaints before the Interstate Commerce Commission may be of various classes: (a) a letter complaining of the action of a carrier in a matter of no great moment and which looks to a correction of an abuse through the friendly offices of the Commission; (b) complaint of abuse looking to the criminal prosecution under the Elkins Law for a violation of the act; (c) complaint looking to the correction by the lowering of rates alleged to be unreasonably high, with or without a claim for damages; (d) complaints looking to the correction of practices which are alleged to be unjustly discriminatory.

A Good Case Necessary

The first thing to determine in any event is whether the party who considers himself aggrieved has a case. It is idle expenditure of time and money to bring any proceeding unless the complainant has at least a good show of winning out. To bring a case known to be weak, for the purpose of aggravating the other side, is worse than useless. It should be remembered that all discriminations do not fall within the statute; the statute only prohibits undue discriminations. Having determined that the prospective complainant has a good case, and that the proper forum is the Commission, it is necessary to determine against whom the complaint should be brought. This is often not an easy matter; the carrier may be in the hands of a trustee, lessee or receiver. Of course, the proper party must be made defendant to the complaint. Having determined these points, it is necessary to determine what portion or portions of the statute are or have been violated. It is due to the defendant that he be informed of what section or what part of the statute he is alleged to be the violator. In short, the rule for making rabbit pie applies with peculiar force to cases brought before the Interstate Commerce Commission—you must first catch your rabbit and know he is fit meat for the process.

Complaints may be filed by any person, firm, corporation, company or association, mercantile, agricultural or manufacturing society, body politic or municipal organization, or the Railroad Commission of the State, and under the new law a carrier may be party plaintiff. It is not necessary that the party complainant shall allege and prove a direct injury to himself by reason of the practices of the carrier. The defendant may be a single carrier; but if the subject matter of which complaint is to be made is such as to bring in two or more carriers, they ought to be made joint defend-

ants. Thus, if a rate should be a through rate and the carriage continuous, the connecting carriers should be made defendants; if the practice is common to two or more carriers, and one seeks to have it remedied by all of the carriers, such railways should be made parties to the proceeding; if a road is operated by a receiver, trustee or lessee, the receiver, trustee or lessee as well as the road itself are proper parties against whom to make complaint.

Drafting of Complaint

It sometimes happens that after one has instituted a complaint, there are others who find themselves in such a position that the decision and order may affect them. Such persons may become by petition intervenors in the suit, and as intervenors may occupy a position in harmony with the carrier or the complainants, or occupy an independent position, seeking only to assist the Commission in reaching a proper conclusion.

It is a difficult matter to lay down a broad general rule which will fit the drafting of complaints. In brief, they should show who the complainant is, the business in which he is engaged, and the place at which he resides or conducts his business. It should also state the names of the parties defendant against whom relief is sought, together with the allegation that they are subject to the act. The complaint should then set forth briefly and succinctly the facts which are alleged to constitute a violation of the law, specifying, as before stated, the particular parts of the law which the complainant deems to have been infringed. Evidence should not be inserted in the complaint; merely the statement of facts on which the complainant relies.

The complaint should close with the prayer or prayers for relief and be signed by the complainant or his attorneys. Formerly it was the custom to verify the complaint by affidavit and oath. This is no longer necessary. Sufficient copies of the complaint should be filed with the Commission that each defendant may be served with one and one for the files of the Commission.

Service of Complaint

The complaint is served upon the carrier by the Commission, and it is required that it shall be answered by the carrier within twenty days, unless the circumstances of the case are such as to require a more speedy or tardy reply. Occasionally the time is shortened or extended by a special order. When the answer of the defendant is made to the Commission, a copy is served upon the complainant. The answer may contain a denial of the allegations of fact and hence a denial of the violation of the law; or it may confess the facts, but deny that such facts constitute a violation of the law; or the answer may confess the violation of the law and satisfy the complainant by granting the relief prayed for. If the answer contain a denial of the facts, or admit the facts and deny that such constitute a violation of the law, the case is set

down for a hearing. A hearing may also be held by a notice in the nature of a demurrer admitting the facts, but denying the violation of the law.

It is to be regretted that in many cases the complaint, petition and answer have not made specific issues for trial. For these reasons the evidence has frequently taken a broad range, and much time has frequently been lost in taking of evidence which is really immaterial in its nature. Complaints and answers ought to be drawn with such clearness and distinctness that specific matters charged are denied or confessed, so that definite points can come before the tribunal for determination.

Introduction of Evidence

At the hearing the complainant introduces such evidence as he may feel justified in doing to substantiate the facts which he has alleged in his petition. At that hearing or at a subsequent one the carrier introduces such evidence as tends to disprove the facts alleged in the complaint of the plaintiff or prove facts which offset those alleged in the complaint. Perhaps the Commission may adjourn until the carrier can secure evidence in its behalf. The complainant, when the carrier has introduced his evidence, has a right to introduce evidence in rebuttal.

The witnesses may be subpoenaed to attend before the Commission and give testimony, and the Commission is authorized to issue subpoenas for the production of documents. The usual rule concerning the subpoenas for production of documents prevails. Testimony before the Commission is given orally, but by consent of the two parties it may be by affidavit or deposition. Witnesses are entitled to the same fees as are paid for like services in a United States court, and are to be paid for by the party for whom the testimony is given. Witnesses are entitled to \$1.50 for each day's attendance at the place of hearing and mileage at the rate of 5 cents per mile from the witness' place of residence to the place of hearing, and an equal amount for returning.

The hearings bring the case to a stage where it is necessary to file a brief. These briefs usually contain the proposed findings of the Commission upon the material facts. Each side are supposed to weigh all of the evidence, much as a jury would, and admit or deny that such and such facts ought to be found from the evidence adduced before the Commission. To these findings of fact an argument and brief of the law are frequently attached, and a copy must be served upon the adverse party. The time when each argument shall be filed is left with the Commission. Oral argument of counsel may be had at a subsequent date, and this in general does not go beyond the confines of the printed suggested findings of fact and the brief. The findings of fact relate to the testimony and the brief to the law of the case. After the argument of counsel it is the duty of the Commission to file an opinion. Heretofore, these opinions contained the

reasons therefor; under the new law the opinion need not contain the reasons for the finding.

Rearguments May Be Had

After the argument of the counsel, or after the finding of the Commission, or after the issuance of the order based upon the finding, a reargument may be had upon the application of either party and the consent of the Commission. So also it is likely that the reopening of the case can be had at any one of the stages of the case just mentioned, if sufficient ground be produced to warrant such a proceeding. It is not certain what grounds are necessary, but doubtless the proposed introduction of newly discovered evidence, which one of the parties could not by reasonable diligence obtain at the trial, and of material benefit to the case, would be such as to allow a reopening of the case. A reargument might be granted, for example, upon some decision of a court interpreting the particular portion of the law which is involved in the proceeding. The Commission makes its findings, which may be entirely in accordance with the complaint, or partly in accordance with the complaint, or against the complaint. If the complaint is not warranted in law it is dismissed. If dismissed, the complainant is probably without further redress. If sustained in whole or in part, the complainant is entitled to the order at the hands of the Commission commanding the carrier, within a certain and definite time, not less than thirty days from the date thereof, that the carrier "shall cease and desist" from the violation of the statute "to the extent to which the Commission shall find the same to exist," and commanding that the carrier "shall not thereafter, publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge" prescribed in the order; or if the complaint seek a correction of a regulation or a practice, the order shall command the carrier to "conform to the regulation or practice" prescribed in the order. These orders shall now "continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction."

Commission's Orders Self-Inforcing

The orders issued by the Commission under the new law are made by the law practically self enforcing. If the order be regularly made and duly served it is the duty of the carrier to obey it. If a carrier shall feel that the judgment of the Commission is wrong, that its order is not in accordance with the law or the justice and equity of the case, it has a remedy in the courts of the United States; a forfeiture is provided if it fail to obey. It is not the province of this article to state the court procedure.

Prospective complainants before the Commission should be cock sure that they have a case. They should be certain that the statute is violated; they

should be certain that the Commission has jurisdiction to determine the case; they should proceed with caution, but having determined they are right, they should proceed with force, and bring to bear every material fact to sustain the allegations of the complaint. It needs but to be said that in order to practice before the Commission one need not be an attorney. A com-

plainant may appear in his own right, and parties not members of the bar may appear for others. While this is true, it is hardly proper to advise that in matters of any moment every complainant should be "his own lawyer." The maxim that he who is his own client has a fool for a lawyer applies in these cases as well as in others.

"Greater Washington—Give It a Boost!"

THE Jobbers and Shippers' Association has been organized in Washington, D. C., by a group of determined, energetic business men. Henceforth the capital city will be not only the Nation's law-giving and administrative headquarters, but it will take its place among the commercial centers of the country when the aims of the new organization are attained.

For many years Washington has been a city beautiful, and the education of any American citizen is incomplete until he has visited it. Now, added to its value as a place of instruction, and charm as a place of pleasure, it is intended by the financial and business interests of the city to take advantage of its natural advantages as a jobbing center and develop them by organized and systematic effort.

The movement was started last month and was chronicled in the July number of FREIGHT. Permanent organization was effected at the New Willard Hotel on July 16 by the election of these officers, to serve for one year:

President, Charles J. Bell, president of the American Security & Trust Company.

Vice president, R. P. Andrews, president of the Andrews Paper Company.

Treasurer, Monroe Luchs, vice president and manager of the Washington Tobacco Company.

Secretary, Charles E. Howe, assistant secretary of the American Security & Trust Company.

Directors for one year: The above named officers and Benjamin W. Guy, of Guy, Curran & Co.; E. J. Kelley, of the Semmes-Kelley Company; F. P. May, of the F. P. May Company; F. E. Graham, of the Armour Packing Company; B. F. Graves, of the Havenner Baking Company; B. B. Earnshaw, of B. B. Earnshaw & Brother; B. F. Saul, president of the Home Savings Bank, and Milton E. Alles, vice president of Riggs National Bank.

At a subsequent meeting of the directors these committees were named:

Freight Committee—Charles D. Semmes, of the Semmes-Kelley Company; E. H. Droop, of E. F. Droop & Sons; B. B. Earnshaw, of B. B. Earnshaw & Brother; E. B. Adams, of the E. B. Adams Company; B. S. Graves, of the Havenner Baking Company; B. W. Guy, of Guy, Curran & Co.; F. P. May, of F. P. May & Co.; R. P. Andrews, of the R. P. Andrews Paper Company; F. E. Graham, of the Armour Pack-

ing Company; W. S. Hoge, of the Hoge & McDowell Company; T. J. Mayer, of William Galt & Brother; Lee L. Herrell, of the L. L. Herrell Company; W. S. Corby, of Corby Brothers; Colin H. Livingstone, of the American National Bank; J. B. Kendall; James L. Owens; Monroe Luchs, vice president of the Washington Tobacco Company; E. J. Kelley, of the Semmes-Kelley Company; James Stoddard, of the Cook & Stoddard Company.

Publicity Committee—Honorary members: Thomas C. Noyes, the *Star*; Edgar D. Shaw, the *Times*; active members: Monroe Luchs, treasurer of the association; Charles E. Howe, secretary of the association; J. L. Tucker, of the *Star*; Edwin Ryals, of the *Times*; Woodworth Clum, of the *Post*; H. C. C. Stiles, of the Maurice Joyce Engraving Company; F. M. Finley, of F. H. Finley & Sons; Eugene M. Tilden, of Lamb & Tilden.

Finance Committee—Charles J. Bell, president of the American Security & Trust Company; Milton E. Ailes, vice president of the Riggs National Bank; B. F. Saul, president of the Home Savings Bank.

It was decided that the dues for the first year will be \$10 or less.

Vice President R. P. Andrews sounded the purpose of the organization when he said: "The Shippers' Association will concern itself with the increase of the jobbing trade of Washington. It is not designed to foster manufactures, or to transform Washington into a manufacturing city. We want, if we can, to make this a jobbing center, and that is the whole plan now sought to be executed."

President Bell gives his view of the first thing to be accomplished in this statement: "The question of freight and of getting it into and out of Washington is the primary thing in this entire movement."

The railroads have signified their intention of co-operating with the Jobbers & Shippers' Association. Speaking for the Baltimore & Ohio, T. W. Galleher, general freight agent, said:

"The Baltimore & Ohio will heartily co-operate in the movement to extend Washington's jobbing trade.

"We know of no discriminations against the city.

"Through cars will be made by the Baltimore & Ohio Railroad to whatever extent the volume of traffic will warrant, and we invite shippers to give us information where the time in transit on shipments via

the Baltimore & Ohio Railroad leads them to believe that through car service is not being given.

"Demurrage regulations at Washington are substantially the same as those at any other cities served by the Baltimore & Ohio.

"We are very much pleased that the Washington jobbers are making an effort to extend their trade, and we believe that upon their efforts must largely depend the success of the movement.

"The transportation companies, we feel sure, will co-operate to the greatest extent possible, consistent with their duty to give impartial treatment to the commercial centres which they serve."

John B. Thayer, fourth vice president of the Pennsylvania Railroad, said:

"Our company is only too glad to co-operate in extending the business at Washington, where it will make traffic for the railroads, by doing everything we legitimately can.

"We do not believe Washington has suffered from any special privileges granted to the other points mentioned or any other nearby points, and we feel that Washington has always been treated very equitably, as far as our company is concerned.

"The arrangement of through cars from Washington to various points is all laid out by our rules in regard to this matter, and the establishment of through service is based largely on the amount of traffic for any and each destination. We should be only too glad to extend the through car arrangement wherever the tonnage offering seems to justify such an arrangement compatible with our facilities.

"The car service regulations in effect at Washington are the rules of the Baltimore and Washington Car Service Association, and are very similar to all the car service rules in the East."

L. Green, freight traffic manager of the Southern Railway, said:

"While the Southern Railway does not handle freight traffic to and from Washington in its own trains (its terminus being Alexandria, Va.), and is dependent upon the Washington Southern Railway as a connection for such freight traffic, it will most

heartily co-operate in the movement to extend Washington's jobbing trade in the territory which it serves.

"I do not know of any special privileges granted shippers in Philadelphia, Baltimore, Norfolk, Richmond or other nearby cities to Washington's disadvantage. I may add that it is my belief that the carriers serving Washington will cheerfully do, in its interest, quite as much as they have done or may do in the interest of other cities under similar conditions.

"So far as the Southern Railway is concerned, it now operates package cars from Washington to the extent that the volume of traffic justifies it in so doing. We will be glad to increase the number of such cars when increased volume of traffic warrants. We now operate a through service from Washington and points north to the South on carload traffic, of which service Washington is at liberty to take advantage.

"It is not my understanding that regulations at Washington, with respect to demurrage payments, differ from corresponding regulations in other cities; but, as heretofore stated, the Southern Railway has no freight terminals of its own in Washington.

"If there were a necessity for the establishment of new through all-rail routes from Washington to the South, we would be very glad to join in a movement to that end. There is, however, absolutely no necessity for any additional all-rail routes from Washington in connection with our line, which is a part of the Eastern and Southern Despatch, operating in connection with the Pennsylvania Railroad, and the Piedmont Despatch, operating in connection with the Baltimore & Ohio Railroad, both of which despatch lines operate an all-rail route through Alexandria from Washington and points north to the South.

"Indeed, I may say in conclusion that Washington is not now at any disadvantage with respect to all-rail traffic, as compared with Baltimore and other Eastern cities."

Hundreds of excellent suggestions already have been made to the officers of the organization, and it is expected that a lively campaign of publicity will soon be inaugurated. The next meeting of the directors will be held August 6.

WANT NEW CAR SERVICE RULES

At the annual midsummer meeting of the Indiana Grain Dealers' Association the following resolution was adopted:

WHEREAS, It has been suggested that the use and movement of the equipment of the railroads of the country is greatly hampered and retarded by reason of rules now in force, whereby cars are required to be loaded with certain commodities headed toward certain markets, etc., or not used at all; and,

WHEREAS, It is believed that the carriers might facilitate the movement of equipment by the establishment of a joint ownership and management and a comprehensive system whereby such rules and restrictions would be abrogated and every car permitted to run to whatever destination designed by the shipper; therefore, be it

RESOLVED, That it is the sense of this convention that such

a comprehensive system as will accomplish the purposes indicated should be put into force, and that we recommend to the management of the railroad companies these matters for their favorable consideration as expressions of the views and desires of the grain dealers of this State.

Mr. Kindel's Dream

Last night I dreamed a railroad train
Was standing on my neck,
And all the robber presidents
Came out to view the wreck.
I dreamed I gave my arms a swish
And rose as from the dead.
Then I awoke—I'd jabbed my arm
Clean through the head of the bed.

—George J. Kindel.

Express Companies and the New Rate Law

BY JAMES E. JOHNSTONE

(Continued from the July number of FREIGHT.)

THE basis of express classification is what is designated as the "merchandise class." It can hardly be said that all rates are based upon the merchandise class, because by tonnage those which do not fall within the merchandise rating or one of the multiples thereof exceeds by weight what is included within that class. Many commodities and varying kinds are included in the "merchandise class." For example, this class includes stuffed animals, liquid batteries, cigar cases, burial cases, cream separators, doll carriages and chairs, game, feathers compressed in bales, preserved fruits, graphophones, live stock in carload medicines (prepaid or guaranteed), mattresses, Saratoga chips, salt water turtles and cameras securely boxed.

Double Merchandise Rates

Many articles in the classification take $\frac{1}{2}$, $1\frac{1}{2}$ or D (double merchandise) rates or "3t-Mdse." (three times merchandise rates). Drug baskets or boxes, with or without empty bottles, corrugated paper boxes for eggs, fish boxes or barrels, homing pigeon baskets or coops, and various other commodities, including practically all "empties," take one-half "merchandise rates."

Double merchandise rates cover various kinds of live animals in less than carloads. Also antlers, barometers, baskets, burial cases not boxed, dressed meats, drums, various glass articles packed in boxes, hobby horses boxed or crated, harps if completely inclosed in wooden cases, lithographic stones, ribbon blocks, typewriting machines in their own cases, and bicycles set up but not boxed or crated.

An elephant or a camel, whether crated or not, takes three times the "merchandise rate"; also boats if completely boxed. But rowboats and canoes, including paddles and equipment, are transported at four times the "merchandise rate," while shells and racing crafts, including outriggers, are assessed eight times the "merchandise rate." Automobiles not boxed will be conveyed at double merchandise rates; if set up, boxed or crated, $1\frac{1}{2}$ times the "merchandise rate"; K. D. and boxed or crated, "merchandise rate." But if one ship his road or speed wagon and neither box nor crate it, he is under the necessity of paying six times the "merchandise rate."

Unjust Classification

No one who has a knowledge of transportation will attempt to justify such a classification as has been here described. No apparent reason has guided the companies in placing different commodities in the same class, or for making one commodity pay $1\frac{1}{2}$, 3, 6 or 8 times the "merchandise rate." The number of commodities which are classified in the express classi-

fication is comparatively small. Students of transportation are accustomed to find in freight classification various inconsistencies which are, it is believed, diminishing in number. The inconsistencies in express classification, if compared with freight classification, seem to be in inverse ratio to the number of commodities classified. Nor is this all, for there yet remains to be considered the special classification and the rates which apply.

"General Special" Class

Many commodities take rates based upon the classification known as "General Special." "General Special" class have rates less than merchandise rates. The list runs alphabetically from B to Z, and includes bread, bulbs, clams, crackers, natural cream, cuttings, various kinds of fertilizers, furs in shipments of 100 pounds or over, holly, green hides, King Cola or Koumiss, lard and its substitutes, malt extract, maple syrup and sugar, milk, mince meat, mussels, olives, oysters, pigeons (within certain localities), growing plants, popcorn, poultry, roots, scions, seeds, shrimp, shrubs, skins, dressed squabs, stearine, stock food, tallow, trees, tubers, fresh water turtles, vegetables, yeast, zoolack, zweiback. The inconsistencies in the "General Special" class are found not only within the class itself, but as well upon comparison with the classification of other articles. When one ascertains that fresh water turtles are in the class "General Special," while salt water turtles take merchandise rates, he must indeed be a Solomon to tell the reason. Lobsters and live crabs take merchandise rates, while clams in shells or in bulk, oysters in bulk, or shell or cans, and fish take the "General Special" rate. Did not express companies have a rule providing that "men, women or children must not be received for transportation," one might suggest why clams should have "General Special" rates and lobsters have the higher merchandise rate; in view of the rule, however, the rates are probably the result of an accident.

"General Special" Regulations

There are certain regulations which apply to all articles in the "General Special" class. Such as an allowance of 25 per cent. may be made between March 1 and November 30 when ice is used for preservation. And if two or more packages from the same shipper are at the same time given for transportation to the same consignee, they may be aggregated and charged for as one shipment. But if any person is found guilty of understating the contents or net weight of packages (which in this class are practically carried at estimated weights), the company requires the prepayment of charges. Certain commodities have special schedules of rates, and those are almost invariably shipped according to estimated

weights, on which the rate is based, or on the quantity. For example, there is a special schedule of rates applying on ale, beer, cider, coca-cola, ginger ale, moxie, pop, soda, mineral and spring water, etc. The rates upon these commodities are about three-quarters the rates upon merchandise if the shipments be made in covered cases or closed barrels. But merchandise rates apply on these commodities if they be shipped open.

Special Rate on Berries

Berries have a special schedule of rates it being at so much per crate. The crate rate is dependent upon the fruit rate. Fruit, green or dried, belongs to the class "General Special." Where the fruit rate per 100 pounds is \$1, the rate per crate of berries, if it contain 16 quarts per crate; is 22 cents; 24 quarts, 33 cents; 32 quarts, 50 cents; 36 quarts, 60 cents; 48 quarts, 80 cents; 60 quarts, \$1. This schedule, however, is subject to a minimum of 35 cents per shipment, but is not to be more than the rate per 100 pounds on fruit; this schedule does not apply from offices of express companies located south of the Ohio River.

The rates upon eggs are based upon cases of 30 and 36 dozen to the case, and rates are made per case, and not per 100 pounds. If a case contain more than 36 dozen, a proportionately larger charge is to be made. It is permitted to ship other matter which is classed as "General Special" in the same consignment with eggs and take the same rates. If the rate on eggs per 100 is \$1 per case, the rate on 30 dozen is 55 cents; if the case contain 36 dozen, 59 cents.

Oysters take special rates per 100 pounds, and each case shall show the number of cans contained and whether or not packed with ice. A can of oysters means those of one quart capacity; 6 quart cans packed in ice are estimated to weigh 25 pounds; 36 quart cans packed in ice are estimated to weigh 105 pounds; 36 quart cans without ice are estimated to weigh 85 pounds.

The Rate Upon a Corpse

There is at least one article the rates on which are not based upon merchandise, but upon passenger rates. While cremated remains take merchandise rates, the rate upon a corpse is double the lowest first class passenger fare, with a minimum of \$5 for any distance; corpses of children under twelve years of age may be carried at one adult passenger fare, with a minimum of \$2.50. In no event must a corpse be sent C. O. D., but one may deposit with the agent at destination the charges and amount of the C. O. D. bill, and it is his duty to notify agent at point of shipment. The rates upon a corpse are made with a view to the passenger fares applying, and such that they shall not conflict with the passenger business. The rule regarding the transportation of a corpse by the railroad requires that it shall pay the full first class fare and be accompanied by a passenger who pays as well full first class fare. The railroad does not

permit the corpse of a child to be carried at less than the adult passenger fare. The result of the two rules is that it is immaterial whether one transport a corpse by the railroad or per express, so far as the charge is concerned.

Competing With the P. O. D.

Special rates with a view to making competition for the Post Office Department are given in the transportation of the following commodities: Almanacs, printed blanks, advertising blotters, blue prints, printed books, pamphlets, campaign literature, printed cards (except plain), catalogues, chromos, circulars, cuttings, embossed books for the blind, engraved envelopes (address printed when shipped by insurance companies), samples of grain, hand bills, heliotype work, holly, hop, samples blank insurance policies, kinetoscope pictures, printed labels, lithographs, magazines, mistletoe, newspaper heads, onion sets, photographic paper, photographs, periodicals, plants, posters, programs, proof sheets, publications, roots, scions, seeds, sheet music, show cards, signs, solar prints, stereoscopic views and tubers. Special rates upon these commodities apply only when shipped by the manufacturer, publisher and dealer in the articles named. If one purchase the articles of a dealer and express them he is charged merchandise rates. It is required that each package be limited to a value of \$10, charges prepaid, and the contents of the package stated upon the cover. If one ship from one express office to another, the special rates apply. The company will, however, accept for transportation packages of these commodities to go to a place which is not an express office, but which is a post office, and will charge the shipper expressage to the end of the company's line and postage to destination. The rate upon these commodities is 1 cent for each 2 ounces or fraction thereof, with a minimum of 10 cents, unless the package contain 50 ounces or more, when the charge will be 2 cents per package less than the charge at the rate of 1 cent for each 2 ounces or fraction thereof.

Charge Applying to Liquors

For some years the express companies have aided dealers as well as consumers of liquors in the mail order business by transporting from one place to another the so called thirst preventers. If a dealer in liquor agrees in writing to make all shipments of 75 pounds or less by express, and will pack such shipment in cases sealed or in boxes which are wired and sealed, will prepay charges and release the express company from all loss and damage to shipment in transit, he is granted special rates. Under such conditions, where the merchandise rate is \$3 or less per 100 pounds, the charge is 20 per cent. less than the merchandise rate; if the merchandise rate is over \$3, a rebate of 30 per cent. is made. For some reason, Southern Express Company territory gives a flat rebate of 20 per cent., whatever the merchandise charge may be. The minimum charge applying upon liquors is as follows: If the package weighs less than

35 pounds, 50 cents minimum for each company carrying; if it weighs over 35 pounds, 75 cents for the initial company and 50 cents each for connecting companies. Such an arrangement between dealers in liquor and the companies is subject to cancellation on a six months' notice. It should be observed, however, that those special liquor rates do not apply to points reached by the Canadian and Dominion express companies. Where it applies it is a rebate to the liquor dealers who sign the express pledge on the lines above mentioned.

Notwithstanding the fact that comparatively few, if any, articles now transported by freight are subject to carriage at "owner's risk," there are a considerable number of articles which the express companies will take only upon those terms. They are as follows: Bath cabinets, barometers, fragile castings and fabrics of all kinds, chronometers, drums, empties, emery wheels, furniture, glass, musical instruments, lithographic stones, microbe killer, organs, pictures, pigeons, sewing machines not boxed, slate, typewriters in their cases only and not boxed, bicycles and wagons not crated.

Reciprocity in Classification

The early classification of freight by transportation companies we are accustomed to call crude. The classification upon canals now has at least three or four classes. While not as perfect as they might be it is said that in railroad classification there has been a tendency to rearrange them in different parts of the country and place in each class all those articles which are used for similar purposes or which are analogous in weight, bulk, volume, etc. Express classification, if it have a basis at all—a doubtful proposition—seems to have been the growth of a plan to assist certain industries by giving them favored rates. Beyond this, there seems to be a plan to favor that individual or industry which will favor the company, as is evidenced in the special arrangement which may be made for the transportation of liquor. Again, it seems to have been in the minds of those who rule the destinies of the express business that there is a considerable portion of articles which would, but for express energy and preferential rates, be sent by mail, as is evidenced by the special rates which are given to periodicals, magazines, newspapers, advertising cards and similar articles. In short, the express companies are out for the business—at any old rate and at any sacrifice of persons, localities or commodities.

(This article will be continued in the September number of FREIGHT.)

OHIO RAILROAD COMMISSIONERS

Governor Harris, of Ohio, has announced his railway commissioners. They are: O. P. Gothlin, of Dayton, traffic manager of the National Cash Register Company; J. C. Morris, of Youngstown, a member of the present railway commission, and O. H. Hughes, of Hillsboro.

The selection of Mr. Gothlin was a surprise to politicians. He is an eminently practical man and thoroughly versed in all subjects which are likely to come before the commission. For six years he has handled the immense traffic of the National Cash Register Company, and it is entirely proper to assume that he knows his business. He has been a member of the Ohio Shippers' Association since its organization three years ago, occupying a place on the executive committee and acting as chairman of the joint conference committee of that organization. He is also a member of the joint conference bill of lading committee of the American Shippers' Association, and since the organization of the Dayton Shippers' Association he has been a member of the board of directors and chairman of the executive committee.

Mr. Gothlin was born in Cincinnati June 19, 1853, and removed to Dayton with his parents in 1856. He was educated in the Dayton public schools and high school and taught public school himself in Montgomery County from 1874 to 1876. In May of that year he began work as a reporter on the Dayton *Daily Journal*, and continued in journalism until 1880, when he entered the employment of the Chicago & Northwestern Railroad in the general freight agent's office. In July, 1883, he was appointed traveling freight agent, which position he held until September, 1886, when he resigned to become commercial agent of the Wisconsin Railroad, with headquarters at Pittsburg. He was transferred to Cincinnati in 1889 as general agent of the Wisconsin Central & Northern Pacific jointly. In 1893 the Wisconsin Central & Northern Pacific separated, and Mr. Gothlin was continued as general agent of the Wisconsin Central at Cincinnati. In 1897 he was made general agent of the Wisconsin Central at Chicago, a position which he left to manage the traffic department of the National Cash Register Company.

Freight Kept for Reference

WILLIAM AYRES & SONS.

Philadelphia, Pa., July 24, 1906.

FREIGHT PUBLISHING COMPANY, 116 Nassau Street, New York, N. Y.:

Gentlemen—We inclose you check for \$3, covering one year's subscription to your publication, FREIGHT. We are aware that our present subscription has not expired, but we are sending this now, so there will be no break in the series.

We are filing all copies as we receive them, as they contain points which are of much assistance in shipping and the handling of claims. This makes them well worth keeping for future reference.

Yours respectfully,

WILLIAM AYRES & SONS,

C. G. C.

A.

Subscribers who do not receive their copies of FREIGHT promptly each month will oblige the publishers by acquainting them with that fact without delay.

Some Interesting Views on the New Rate Law

BY REPRESENTATIVE CHAS. E. TOWNSEND

To the Editor of Freight:

SIR—You ask my opinion of the new rate law, and I hasten to say that I believe it is as good a measure as any reasonable man could expect. It is practically what I contended for at the beginning of the session. I had hoped that a provision might have been inserted in reference to differentials and another looking to the control of classifications; but with the clearly lodged power of fixing rates upon complaint and hearing in the Commission, I am satisfied that the Congress has acted wisely under all the circumstances.

The greatest and most wholesome benefits, according to my belief, which will come from the law will be the action of the carriers themselves in complying with its provisions; unreasonable rates can be reached and determined. The court review power is only such as was inherent in the court before the act was passed. Injunctions restraining the operations of the commissioner's orders will, in my judgment, only be issued where absolute justice requires it. The enlarging of the time in which a carrier can raise or lower a rate, the bringing of private cars under control of the Commission, the inclusion of terminal and switching facilities, will necessarily reduce, if not abolish rebates; in fact, the measure is more far-reaching and comprehensive than any friend of rate legislation at the beginning of the Fifty-ninth Congress thought possible. I confidently expect it to bring relief to the people for many transportation wrongs from which they now suffer.

VIEWS OF A PRACTICAL MAN

By L. A. CLARK

(Traffic Manager, Ball Brothers Glass Mfg. Co., Muncie, Ind.)

To the Editor of Freight:

In compliance with your request for my opinion of the new rate law, I am pleased to submit the following:

The bill as a whole will be of good service, from the fact that it gives to the Interstate Commerce Commission the power to enforce the law and necessitates the strict adherence to tariff rates.

Section 6 requires thirty days' notice to the Commission of proposed changes in tariff and provides that the Commission may permit such changes in less time and otherwise modify the rule upon proper showing by the carrier. The time thus required to effect a change desired is entirely too long for our progressive American commercialism, and the machinery necessary for prompt and satisfactory modification of this provision by the Commission will prove too cumbersome and wholly inadequate to meet the requirements of the shipping public. A notice of ten days would prove quite sufficient for all concerned and under the new law afford ample protection against abuses which prevail by reason of the so-called "Midnight Tariff" of a few years ago.

Unless the Commission modifies the rule governing the issuing of tariffs, the same will prove unnecessarily burdensome to the roads, and the multiplied duplicating, issuing and re-issuing of tariffs by all the carriers will, instead of simplifying such publications, become more complex, and therefore more difficult to interpret and understand by the shipping public. The shipper desires the minimum number of tariffs, clearly expressed and not subject to a diversity of constructions and interpretations.

The bill is made up more from a legal than from a practical standpoint. There are a number of modifications and interpretations necessary to a clear and definite understanding of its provisions. These will doubtless be forthcoming from time to time, and the Commission will have the opportunity to use its power for such modifications and interpretations as may be necessary and equitable.

In connection with this bill there is a certain latitude given the Commission until it is changed by the court, but there is no provision as to how the carrier shall be recompensed if the court decides contrary to the ruling of the Commission; while, on the contrary, the carrier is liable for any difference of opinion which may be found to exist, and has to render within a specified time settlement on the basis of the Commission's ruling. In this I am of the opinion that there should be some modification and a rule made, so that wherever shippers receive a benefit from a ruling of the Commission they should likewise be liable for restoring to the carrier the amount involved.

The Commission, to properly adjust conditions between carrier and shipper, and intelligently solve the many intricate and complex problems which it will of necessity have to meet, should be composed in part by men who have had extensive, practical experience in treating tariff matters, and not make the success of the act dependent on men who are only legally qualified to dispose of such subjects. The Commission would be greatly strengthened if it were enlarged to ten members, composed of men with qualifications about as follows: Four to deal from a traffic standpoint, four to deal with the legal side, and two from commercial or financial life. This would remove the constant settlement of practical questions from a legal standpoint only, and remove the cause of a very widespread and more or less just criticism of the present formation of the Interstate Commerce Commission. This would also bring about a greater spirit of fairness to the carrier and shipper, and would be an advance movement toward the recognition of their mutual, interdependent relations.

MR. PROUTY ON THE NEW LAW

Commissioner Prouty, of the Interstate Commerce Commission, has contributed to the July *Review of Reviews* an article upon the new rate bill. He refers

to the various provisions of the bill and says "the benefit of this act will consist more in what it prevents than in what it corrects." The writer seems to doubt the constitutionality of the statute, for he says:

"Assuming that the courts sustain its main provisions, and that its enforcement is reasonably effective, it may be expected:

"1. For the last few years railway rates have been advancing; from now on the tendency will be the other way. This will be due, not to any extensive or sweeping reductions ordered by the Commission, but rather to the fact that the railways themselves, having knowledge that the reasonableness of their action may be challenged, will hesitate to make the advances which they otherwise would, and will grant the demands of

shippers for reductions, which they otherwise would not.

"2. The payment of rebates and the granting of similar concessions from the published tariff will, in the main, cease. Rebates will never entirely stop so long as competition continues, but they will become rapidly less, and in ten years from now that sort of discrimination will be as rare as it was universal ten years ago.

"3. Discriminations between localities will largely continue, and this will be the most fruitful source of complaint in time to come. It is difficult to see, however, how such discriminations can be altogether avoided, unless our waterways are to be shut up and the benefit of geographical position entirely ignored."

Railroad Men Grapple With the New Law

EXECUTIVE and traffic officials of the railways throughout the country have been busy during the month of July studying the new rate law. There was a conference of the New York Central officials at Niagara Falls, among those present being F. L. Pomeroy, freight traffic manager of lines east of Buffalo; Capt. G. J. Grammer, vice president, traffic department, lines west of Buffalo; Edwin H. Croley, division freight agent at Buffalo of New York Central; F. L. Talcott, commercial agent at Buffalo of Lake Shore; Warren J. Lynch, passenger traffic manager of lines west of Buffalo; H. J. Rhein, general passenger agent of Big Four; O. W. Ruggles, general passenger agent of Michigan Central; B. B. Mitchell, freight traffic manager of lines west of Buffalo; G. H. Ingalls, general freight agent of Big Four; W. C. Rowley, general freight agent of Michigan Central; N. H. Anspach, chief of the tariff bureau of Lake Shore; S. B. Sweet, general freight agent of Lake Erie & Western; T. J. Cook, general freight and passenger agent of Chicago, Indiana Southern; W. H. Ward, assistant general freight agent of Chicago, Indiana & Southern; James Webster, general freight agent of the Nickel Plate; C. L. Hillery, assistant general passenger agent of Big Four; J. L. Horner, Cincinnati; G. E. Shaw, Pittsburgh; O. E. Butterfield, W. C. Rowley, Detroit; L. Wacker, B. S. Maguire, Chicago; John H. Clark, W. A. Terry, H. Bromley, Cleveland; W. W. Manwell, Indianapolis; L. J. Hackney, Cincinnati; George C. Greene, Buffalo; S. D. McLeigh, Indianapolis.

At this conference several sections of the new law were deemed impracticable. For instance, the law calls for the posting in every station of copies of the interstate tariff of rates from that station. This would involve almost an impossibility and a great expense. It is expected that the Commission will not require more than a notice posted in each station that the agent has copies of the interstate tariff of rates from that station and will give all necessary information upon application.

In Chicago, on July 16, there was a conference of the officials of roads operating west of Chicago. At this conference it was discovered that there are about as many interpretations of the new rate law as there are lawyers.

As the result of the meeting two committees were appointed to formulate a general policy. First, there was a committee of traffic men to revise the traffic situation. The legal committee will be advisory and no rules will be formulated by the traffic committee as final until they have been passed upon by the lawyers.

The traffic committee is composed of the following officials:

W. B. Biddle, vice president of the Rock Island; Darius Miller, vice president of the Burlington; Ben Campbell, vice president of the Great Northern; H. R. McCullough, vice president of the Northwestern; J. H. Hiland, vice president of the St. Paul; J. W. Blabon, traffic manager of the Alton; J. M. Johnson, assistant to the vice president of the Gould lines; D. O. Ives, traffic manager of the Wabash; C. Haile, traffic manager of the M., K. & T.; C. L. Wellington, traffic manager of the Colorado Southern; T. J. Hudson, traffic manager of the Illinois Central; William Sproule, freight traffic manager of the Southern Pacific; J. C. Stubbs, traffic director of the Harriman lines, and Samuel C. Stickney, vice president of the Great Western.

The railroad attorneys, to whom all questions will be put up for final determination, and who will compose the legal committee, are as follows:

L. B. Brower, of the Northwestern; George B. Peck, of the St. Paul; C. W. Bunn, of the Northern Pacific; R. M. Shaw, of the Alton; Gardiner Lathrop, of the Santa Fé; C. N. Travous, of the Wabash; W. E. Osborne, of the El Paso & Southwestern; Richard A. Jackson, of the Rock Island; J. W. Blythe, of the Burlington; J. M. Dickinson, of the Illinois Central; P. F. Dunn, of the Southern Pacific, and J. M. Baldwin, of the Union Pacific.

Difference in Import and Domestic Rates

BY FRANK M ASQUITH

"No lower rates should apply on goods imported than actually obtain on domestic goods from the American seaboard to destination, except where water competition is the controlling influence."—*President Roosevelt's last annual message to Congress.*

One of the most frequent and constantly recurring complaints against transportation by rail has been the disparity in rates between commodities imported, and on the same commodities when of domestic production, or stopped in transit at the seaboard so long as to become domestic traffic. It is a fact well known that it has been the custom on imports, particularly those heavy in volume, coarse in quality and large in quantity, to accept a land rate to ultimate destination much less than if the goods were of domestic production, or cease by entry at the seaboard to be foreign freight.

A Question of Utmost Concern

The custom of carriers permits imported articles to remain at the seaboard ten days, then be forwarded at a freight rate the inland portion of which is less than upon articles of domestic production at the seaboard or articles of foreign manufacture which become a part of the property of the seaboard State by remaining at the seaboard longer than the time mentioned.

The question whether or not there should be any difference in the land rate on domestic goods as distinguished from foreign articles is one of the utmost concern. It is not at all free from difficulty. If the difference be small it may, perhaps, be accounted for; but when the difference is considerable, as it is in many instances, it can easily be seen that the policy of our Government in enacting a protective tariff can be set at naught by the traffic managers who name rates from the seacoast to the interior. So, also, the same traffic managers, if they name sufficiently low rail rates on export traffic, can vitiate the custom laws of other countries.

It is a difficult thing to understand why a given quantity of domestic goods should pay a greater freight rate than the same quantity of goods of foreign production or manufacture. At various times several railway traffic managers have attempted to justify these differences in rates. So far as the writer is aware, only one railroad authority has said that there should be no difference between the rates on domestic and import or export traffic. Paul Morton, when vice-president of the Santa Fé, testifying before the Industrial Commission, said: "I am one of those who do not believe that the American railroads ought to put lower rates on import or export articles than on domestic, except where forced to by foreign competition."

Claims of Traffic Managers

The various traffic managers who have attempted to justify these differences in rates put forward several claims. Among others, that the low rates upon traffic are due to the competition between the rail carriers; that unless lower rates were made the traffic would not move, and that it must move in order to have us maintain our commercial position among other countries; that while the railroads cannot afford to haul all traffic at the import rates, yet these rates are not so low as to involve an absolute loss; and finally, that no city or community at the seaboard is injured by reason of these rates, since, if the rates were identical, the traffic would not move at all. No one traffic manager gives all of these reasons, but each add to some one or more of the reasons just named the term which, in transportation circles (like charity covering a multitude of sins) namely, "commercial conditions" compel it. This general term is of remarkable elasticity. It is used in and out of season to justify any rate or practice. Where reasons fail, or where the real reason is not to be given, the use of the alliteral term, "commercial conditions," is supposed to justify the action.

It is well to inquire the effect of lower land rates on import than on domestic commodities. Independent of the customs tariff, the consumer in the interior may, perhaps, secure the article as cheap, if not cheaper, than if it be of domestic production. If a consumer desire a shipment of pottery, he asks the price of a British manufacturer. If, to the price named by the manufacturer, a sufficiently low freight rate can be made, by which the purchaser can buy for less than he would be compelled to pay to a United States manufacturer for the same goods, the deal is consummated. Pottery is a commodity much sought after by ocean vessels; it makes excellent ballast. If they do not get pottery paying some little freight, they must buy ballast and pay for loading and unloading; or, if properly equipped, use water for ballast. What has been said of pottery is largely true of a considerable number of articles, such as sulphate of ammonia, asphaltum, bagging, bleach, brimstone, burlaps, castor beans, cement, clay, crockery, fuller's earth, iron pyrites, kainit, kaolin, magnesite, iron, chrome or manganese ore, potash, brewers' rice, mineral salt and salt cake, soda ash, soda, spiegeleisen and sulphur. All of these are imported in considerable quantities, and for the land haul pay less than domestic traffic.

Predicament of the Interior Producer

By low land rates on imports the interior producer is placed in competition with the foreign manufacturer, and may lose the deal by reason of the single fact that the freight rate from Liverpool, for example, to

Des Moines, is less than from Pittsburg to Des Moines. If the commodity be one on which there is a customs duty, placed there by the wisdom of Congress, it is not unusual to see the amount of the tax reduced to a considerable extent or perhaps absorbed by reason of the low freight rate accorded it. The consumer can buy the same articles of foreign production at such a price less than the American manufacturer as is sufficient to cause the patriotism of the consumer to weaken and his bank account to strengthen.

The position of the importer at the sea coast is a peculiar one. If through rates from foreign countries to the interior on all commodities were made less than on commodities which are manufactured at the seaboard or assume a domestic character by reason of stopping at the seaboard, the business of jobbing in all its phases at our natural ports must practically cease. Since these import rates do not apply on all commodities, it is only the former importers of these favored articles who have gone out of business; some few remain, but their business is entirely local. By reason of the low rate accorded to imported commodities, the handling of the particular commodities at the seaboard has been seriously prejudiced. Formerly one could buy in considerable quantities and make shipments to the interior in smaller lots. Now, many importers are not at the seaboard, but at the interior. In justice it ought to be said that the establishment of ports of entry have assisted in this change. This has not, however, been an important or very influential factor.

For the foreign producer, these lower import rates are a gift to the extent that they are less than on domestic manufactures. The foreign producer can sell more of his commodity because he is placed in competition with others; and, while he might sell, he is, by the advantageous rates, able to secure more for the articles which he sells than if required to pay the same inland charge as the domestic purchaser.

Rail and Ocean Carriers

One other class of persons need to be considered in this connection, namely, the rail carrier and the ocean carrier. It is claimed for the rail carrier that the import land rate while not remunerative, is not a losing proposition; most of the time it is the business of swapping dollars, at least that is the word of the carriers. The ocean carrier tells much the same story. If he could not secure for transportation these heavy commodities at rates which are better than the purchase and stowing of ballast, he would use ballast. By securing this tonnage he gets a little something and often, particularly in slack seasons, is willing to transport goods at practically the cost of loading and unloading.

Thus we see that these import rates are a detriment to the American producer whether he be at the seaboard or the interior, of no material advantage to the consumer, a serious handicap to the commercial interests of the cities at the seaboard, of no particular

benefit to the rail or water carrier, but of material advantage to the foreign producer.

The attempt to justify these rates never holds water and often is ludicrous. At times the volume of tonnage which is moved, they say, in train loads is given as a controlling reason, and yet the same traffic manager who will urge this as a reason for a low import rate on one commodity will refuse to permit a like rate to apply on some other commodity which moved in greater quantity.

If railroad rates are to be based upon cost of service, it is easy to see that the import land rates must be advanced or the domestic rates reduced. If rates are approximately based upon cost of service, the same result must follow. If rates are to be based upon commercial conditions, it but remains for the man at or near the seaport to say to the producer or manufacturer, "I will give you a certain price for your commodity delivered here." The producer says I will sell you my wares at such a price at point of origin. It then becomes the duty of the carrier to accept the difference between these two prices. If, however, rates are to be made upon the theory that they shall be just so much or just so little, as the traffic will bear, the carrier who has no competing agency can name practically any rate. The competing carrier, if the competition be active, will find that the traffic will only bear very low rates, if the traffic be considered "desirable."

Goods Moved at Import Rates

The amount of goods moved at import rates is considerable. Through the United States North Atlantic ports it approximates 700,000 tons per year. If these rates be a discrimination against domestic traffic, it is, therefore, a serious discrimination. The Interstate Commerce Commission have never been able to justify the difference nor has any testimony ever been adduced before them or elsewhere which was in anywise conclusive. If the dealer in jute at the seaboard is compelled to pay 12 cents to get his commodity to destination, while the land proportion of the rate paid upon the imported through traffic is 8 cents, it is easy to see how our railroads, if they work at or less than cost—and they claim they are on this business—are using their capital for the benefit of the foreign dealer. And, instead of building up industries within our confines, they are building up industries abroad.

One of the most important matters in connection with import rates is the so called import committee. This committee consists of representatives of the trunk lines and various other transportation agencies. It was said by the Interstate Commerce Commission that "it is the duty of this committee to name rates for the transportation of import traffic from North Atlantic ports to interior points, and it has charge generally of matters pertaining to this description of traffic. It has rules and regulations which the carriers are expected to observe and practice, although as stated by the chairman of the committee nothing except 'good faith' compels them to do so." With this com-

mittee naming rates from the Atlantic seaboard it is easy to see that a reason most often alleged for lower land rates on imports, namely, competition between carriers, falls.

Water Competition

Not much attention has been given to lower rates on import traffic by reason of the fact that frequently water competition is urged to justify these rates. In a case where a lower land rate was made on import traffic from New Orleans to Pacific points, in fact much lower than the domestic rates, such rates were justified on the ground that the same goods might come by water to San Francisco and then East by rail to destination. While the water competition in this case might be controlling, it is, nevertheless, a fact that there are comparatively few similar instances.

What ought now to be determined is this—if an import rate from the seaboard, which is two-thirds the domestic rate, be reasonable, what can be said of the domestic rate? Language fails to give the proper adjective. If, on the contrary, the domestic rate is reasonable, why should the carrier name a rate which is two-thirds of a reasonable rate? If the import rate is practically cost, is not the one-third advance too much profit? If the domestic rate includes only a reasonable profit is not two-thirds of that rate less than good business judgment would dictate?

This matter of import rates, being one of the most important, affecting as it does considerable quantity of tonnage, ought to receive immediate consideration under the new rate law. President Roosevelt is on record to the effect that rates upon import and domestic commodities should be the same from the seaboard to the interior. No carrier can, by the principles of good business, political economy, or economics or any other principles, justify the existing discrepancy in rates. It is to be hoped, for the benefit of the American consumer, the American producer and the American importer at the seaboard, as well also for the railroads themselves, that the question be promptly, definitely and finally determined.

WESTERN MEN WANT A RULING

Western railroad officials have practically declared war upon the plans of A. B. Stickney, president of the Chicago Great Western Railroad, for the issuing and posting of tariffs, and a committee of executive traffic officials has been selected to go to Washington to appear before the Interstate Commerce Commission to oppose President Stickney.

J. C. Stubbs, vice president and traffic director of the Harriman lines, who has been chairman of the meeting held in Chicago to study the new rate law, gave out the personnel of the committee today. It will be composed of J. C. Stubbs, Harriman lines, chairman; Darius Miller, first vice president of the Burlington; W. B. Biddle, third vice president of the Rock Island-Frisco lines; C. Haile, traffic manager

Missouri, Kansas & Texas; Frank S. Bowes, freight traffic manager Illinois Central, and J. H. Hiland, third vice president Chicago, Milwaukee & St. Paul.

The committee will go to Washington at the earliest convenience of the Interstate Commerce Commission, and will ask that body to make its ruling on the sections of the new law which are in its province to interpret or modify. While the recommendations of Mr. Stickney made recently before the Commission are considered good in some particulars, the committee is not inclined to submit to all of the recommendations without at least making a protest.

"Mr. Stickney may have a plan by which tariffs can be issued so simple that a layman can read and understand them," said a member of the committee, "but if he has he is entitled to our heartfelt thanks. My impression is that tariffs cannot be issued so that one who is not experienced can understand them. We want our tariffs as simple as possible, and that is why we are going to Washington to see the Commission."

If precedents are to be considered, it is not likely that this committee will accomplish very much. Early in the history of the Interstate Commerce Commission, in replying to a petition asking certain questions on the construction of the statute, it was decided that the Commission could not take cognizance of hypothetical matters and render opinions thereon. The Commission stated that there must be a complaint, alleging a violation of the law, and then it could render a decision. It also said, however: "Good faith, exhibited in an honest effort to carry out the requirements of the law, will involve a reasonable and fair minded official in no danger of damages or fines."

RAILROADS OUT OF POLITICS

J. S. Barbour Thompson, of Atlanta, general agent of the Southern Railway in Georgia and Alabama, recently stated that President Spencer decided over a year ago that the company should draw out of politics, make no more contributions of money, either to political parties or their committees, or to the candidates, and exert no influence whatever upon any one, an employe of the company or other, in political matters.

Mr. Thompson also stated that the same policy would be followed by the Central of Georgia and Louisville & Nashville roads.

Secretaries of commercial and public bodies throughout the United States are invited to report their proceedings to FREIGHT. All subjects of general interest relating to freight rates and transportation questions will be published in detail. Communications of this kind should be addressed to Editor FREIGHT, 116 Nassau street, New York city.

no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed by law being hereby abolished." Section 5440 of the Revised Statutes provides: "If two or more parties conspire * * * to commit an offense against the United States * * * and one or more such parties do an act to effect the object of the conspiracy, shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years."

The decision of the court was in regard to two indictments, one under each of the laws, one for giving rebates, the other for conspiracy to give rebates. The demurrers were sustained as to the latter, on the ground that there was no distinction between the two offenses.

Without criticising the decision of the court, it is certain that the decision of Judge Holt is not in consonance with the decision of Judge McPherson. In the decision of the latter the holding was exactly the opposite of the former. It will remain for the appellate courts to determine whether or not Section 5440 applies to offenses under the Interstate Commerce Law.

REFERRING to the Interstate Commerce Act as it was before the passage of the rate law of 1906, Commissioner Prouty, in a recent article, says: "The glaring defect in the old law was the utter inability to produce prompt or definite results."

The truth of this saying has been brought home to all parties who attempted to secure a correction of transportation abuses and proceeded under that law. If the matter brought to the attention was of importance, it was strenuously resisted by the carriers. With their paid corps of legal employees, receiving much higher salaries than the Government saw fit to pay, with the brightest legal lights at their command, with the financial ability to appeal cases, the carrier found it easy to defeat any proposition which the Commission might put forth. The heart of the case was found in the court; not until judicial machinery had been set in motion could the shipper realize the forces which he was up against.

If there is one glaring defect in the rate law of 1906, it is the utter inability to produce prompt or definite results. The time of the shipper before the Commission and the expense to the complainant are in no wise lessened, unless, possibly, it is to be supposed that seven men could arrive at a determination more promptly than five; this, of course, is a fallacy not to be seriously considered. It is a well known fact that in recent years the number of dissenting opinions in the cases decided by the Commission has increased. Heretofore three might concur in an opinion; but hereafter, another Commissioner must be con-

vinced of the righteousness of the complainant's cause. We cannot see that the court procedure is to be materially different. True it is, the carrier starts the judicial machinery. As a starter, he can frame the case largely to suit his own ideas; he may bring before the court such pleadings that the attention of the court shall be focused upon a single point, or may spread it over the whole range of the case.

In the same article it is said that if the railroads recognize that the enactment of the rate bill is the people's declaration that railways must submit to governmental control, that certain abuses must stop, if they co-operate, conditions will be fairly satisfactory. Of course, the carriers will co-operate; railways are noted for their ability and willingness to co-operate; they have always co-operated; they have co-operated in the enforcement of a law which was to their liking; they have co-operated in giving lower rates to favored shippers, localities and commodities. We see no tendency on the part of the carriers, individually or jointly, to co-operate in the enforcement of the rate law of 1906. Those who have most loudly shouted their willingness to co-operate in the enforcement of the Interstate Commerce Law in the past have recently been shown to be persistent violators of the act. Earnest co-operation can only be secured by the judicial club; administrative co-operation belongs to the millennium.

Referring to the probable inability of the Interstate Commerce Commission to handle the cases with expedition which will be brought before it under the new law, a correspondent states that since its organization the Commission has disposed of 3,223 "informal" cases, being at the rate of 190 per year; the "formal" cases brought numbered in the seventeen years 789, and the Commission rendered decisions in 297, being at the rate of 17 per year; if consolidated cases be considered the decisions number 359 and average 21 per year. It is well for prospective litigants to weigh their cases well, for of the cases decided by the Commission, only about 70 per cent. are in favor of the complainant.

ON the subject of the rate law of 1906, if one judge from the published opinions of its constitutionality and efficiency, there appears to be two classes of thought. One class bubbles over in mentioning what they consider the good points of the statute; they ignore absolutely any reference to the present inadequacy of the law, but occasionally state that other rights must be created and remedies devised in the near future. The other class hurry to point out the deficiencies and resulting inefficiencies of the law as it will be when it becomes effective. Both classes admit, directly or by inference, that the law is not all that can be wished.

The carriers say nothing. And are in all probability devising ways and means to avoid those portions of the statute which are really good.

Upon the whole, we are inclined to think that the law is a case of flies in the gravy, of tares in the wheat,

of sin mixed with righteousness. The relation which the flies, the tares and the sin bear to the other elements is a matter of personal opinion and a fertile subject for debate.

WHEN Monsieur Gordon Bennett leaves "that dear Paris," jumps aboard his merry yacht, the *Lysistrata*, and sails for Amerique, the effect around Herald square, and particularly in the publication palace for which the square is named, is nearly as startling as an earthquake on the Pacific Coast. Types get mixed, editors become flustered, and even the owls are "on the blink."

Monsieur le Commodore was here on the night of Saturday, May 12, when the *Herald* undertook to print a report of Senator Bailey's remarks in the United States Senate concerning FREIGHT and the President. Had the fact of Mr. Bennett's presence in New York not been known to us we would have been chagrined when we saw our really conservative magazine referred to as the *Frieheit* in the *Herald* on the following Sunday morning.

Under the circumstances, however, we cannot conscientiously blame editor, compositor or proof-reader. The atmosphere of the Avenue des Champs Elysees, when it reaches Broadway, is most demoralizing.

All Shippers Should Read Freight

OHIO HAY AND GRAIN COMPANY,
Wholesale Dealers,
ADAMS BUILDING.

Findlay, Ohio, July 12, 1906.

FREIGHT PUBLISHING COMPANY, New York City,
N. Y.:

Dear Sirs—We have just read a copy of FREIGHT which was received at the convention of the National Hay Association at Put-in-Bay. We consider this one copy worth the subscription price to any one engaged in the shipping business.

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NEW BOOKS

Ocean and Inland Water Transportation. Johnson-Appleton.

This work is intended to serve as a complement to "American Railway Transportation," by the same author. Unfortunately, it is not as carefully prepared or as accurate a work as was the first edition of the author's book on railways. One even slightly familiar with the subject of which the author treats finds continual omissions and inaccuracies, and is inclined to disagree with some of the conclusions reached by the author. One might disagree with his statement that we have "arrived * * * at a clear understanding of the problem of equitably adjusting the relation of railroad carriers to the public" (p. 4); one might disagree with the author's view upon the subject of subsidies, so called. The author would have done well to have added sufficient to the work by stating why sailing vessels cannot navigate the Red Sea (p. 46); the difference between subsidies and subventions (p. 68); by stating that there are different kinds of ocean bills of lading and describing them (p. 73); by describing inland water bills of lading; by stating a cause of the increase of foreign mails (p. 99); by stating that mail is carried on some lake and inland steamers (p. 106); by advising the routes of the Cunard line, British India and Peninsular and Oriental Company's line (p. 132 and 136); by advising the reader of the nature of the agreement between the German lines and International Mercantile Marine; by stating that there are ocean ship brokers (p. 160); by stating to what railroad the Morgan line belongs or is affiliated with (p. 166); by stating why it costs more to unload a sailing than a steam vessel (p. 247). The book would have been much more accurate had it not led the reader to believe that floating elevators carried the grain from dock to ocean going vessel; as a matter of fact, the grain is transported in barges and the work of the elevators is transferring from barges to ocean bottom. One is led to believe that immigrants are taken by the ocean steamer from its dock to Ellis Island; as a matter of fact, they are transferred by a craft much like a ferry boat. The author regrets that he cannot give more information concerning ocean conferences, agreements and pools, for "there is practically no literature upon the subject" (p. 158). A mine of information concerning the largest, most recent and most effective freight pool is to be found in the opinion of and testimony before the Interstate Commerce Commission in the Differential Rate Case, decided April 27, 1905. Here will be found the decline in the ocean freight rates during the past three or four years; here will be found the minimum freight agreement, together with its workings and its results. If the author's statement concerning the manufacture and sale of lumber by the Pacific Coast roads (p. 166) be true, some United States Senators must have been seriously misinformed when debating the provisions of the recent rate law concerning the manufacture and sale of

lumber and its commodities by common carriers. The author might advise us concerning lake traffic that, as a matter of fact, no boats are permitted to receive or discharge cargoes except they belong to the Lake Association, and with which the dock owners act in harmony and concert. The subjects of marine insurance, State pilotage laws and the competition of water carriers are marvelously inaccurate.

As the works of Mr. Johnson are more than likely to run through at least two if not more editions, it is to be hoped that this production will receive a considerable brushing up.

Twenty Years in the Press Gallery. Stealey. Publishers' Printing Company.

If one desire to know what has been accomplished by the Federal Legislature in the past two decades, to know what the life of official Washington is, to get a line on a prominent member of the Senate or House, he cannot do better than to consult this book. Mr. Stealey has had excellent opportunities for observation, used discriminating powers in his perceptions, and been able to state what one only with great difficulty can find, namely, recent history.

"Demurrage" and "Reciprocal Demurrage"

A FEW excerpts from the opinion of Attorney General John D. Atkinson, of Washington, furnished to the Railroad Commission of that State on the subject of "Reciprocal Demurrage," were printed in *FREIGHT* for July. The subject is always interesting, and Mr. Atkinson's view of it is here printed in full: *To the Honorable Railroad Commission of Washington, Olympia, Wash.:*

GENTLEMEN—In reply to your request for an opinion as to the meaning of the words "Demurrage" and "Reciprocal Demurrage," as found in the third line of Section 3 of the Railroad Commission Law—Laws of 1905, page 147—I advise you as follows:

Demurrage, in the ordinary sense of the term, is a compensation for delay or detention of a vessel, car or other vehicle of transportation. It may become due by reason of detention for the purpose of loading or unloading. As applying to railroads and cars, it may be defined as a charge made by the company carrying loaded freight cars to a point of destination, against the shipper or consignee, of so much a day, after the lapse of a certain time from its arrival, for each day's delay, on his part, in receiving the contents. It may also be used to designate a charge made by a company owning loaded cars to a company upon whose road they are forwarded to their destination, for their use while in transit on the road; and also of so much a day for any undue delay in returning them.

It has become well settled both in law and practice, that a railroad company, by regulations brought to the notice of the shippers and consignees of goods, may make and enforce a reasonable charge in the nature of demurrage for the detention of its cars by unreasonable delay in unloading them, unless there should be a statutory provision to prohibit it. Railroads under the law are compelled to receive goods of the public and deliver them without unreasonable delay. For the good of the shipper, the consignee and the whole people, as well as for the railroad company, it becomes necessary that the latter be fortified by law to the end that it be subjected to no embarrassment because of the unreasonable delay of its cars.

It is necessary that a railroad be able to establish and maintain proper rules and regulations to require that the public be fair, prompt and businesslike in dealing with it. If no charge could be placed upon detention of cars, consignees would frequently detain and use the cars of a railroad as warehouses for indefinite periods, and without compensation; and the business of transportation companies would be at the mercy of private caprice, and private interest, and the carriers would be embarrassed and hampered

in their facilities immeasurably. It would result in obstruction and chaos in business that would bring loss and damage not only to railroads but to shippers in general and the people at large.

The right of railroad companies to reasonable and fair demurrage and the necessity and the resulting benefit to all concerned is clearly established by weight of authorities, and is fully made manifest in cases, as follows:

- Miller v. Georgia R. Co., 88 Ga., 563.
- Union Pacific R. R. Co. v. Cook, 50 Am. & Eng. R. R. Cases, 89.
- Miller v. Mansfield, 130 Mass., 260.
- Crommelin v. N. Y. R. Co., 4 Keyes N. Y., 90.
- Kentucky Wagon Mfg. Co. v. Louisville R. Co., 50 Am. & Eng. R. R. Cases, 90, Note.
- Kentucky Wagon Mfg. Co. v. Ohio R. Co., 988 Ky. 152.
- Norfolk R. R. Co. v. Adams, 90 Va., 393.
- Baldwin, in his work on American Railroad Law, page 357, on the right of a railroad to charge demurrage, says:

"A rule imposing a demurrage charge of a reasonable sum, such as a dollar a day for loaded cars, which the consignee fails to unload within forty-eight hours after their arrival, is a reasonable one. Cars are designed for vehicles, not storehouses. Such a rule enters into the contract of shipment, and if it has been properly made public, binds all consignees, though they may be without actual notice of it.

"The United States are divided up by general agreement of railroad companies into transportation districts, in each of which there is a Car Service Association, composed of railroad companies doing business in that territory and professedly designed to facilitate the loading and unloading of freight cars. Such associations make rules as to demurrage, which become by adoption rules of the companies constituting it. For demurrage due under such a rule the company holding the car has a lien at common law on the goods which it contains."

In endeavoring to seek and to give a correct definition of "reciprocal demurrage," I have discovered that the term is rather new and recent in both law and practice; but while it seems to be one of the latest modern ideas, it has already taken hold and has become a vigorous growth in several States. The word "reciprocal," in its ordinary sense, would mean mutual, alternate or counterpart. Reciprocal demurrage, as applying to railroads and shippers would mean in its chief sense at any rate, a recompense, money or demurrage due from the railroad to the shipper in pay for unreasonable delays, and failure to provide empty cars in reasonable time for the use of the shipper.

The railroads, for many years, have had rules and regulations established, wherein they claimed it as a right, and exacted as a matter of fact, reasonable demurrage from the consignee. This has been general with the railroads, not only throughout the United States, but in foreign countries. It has been almost universally admitted that railroads, under

usual conditions, have the right of demurrage on unreasonable delays, etc.

However, this right, as between transportation companies and the people, is in a very large measure, if not in every sense, mutual, interchangeable, alternate and reciprocal. The law of give and take, favor and be favored, live and let live, and do as you would be done by, is as necessary and as applicable between the people and the railroads, as it is anywhere else in the world. The interests of the carrier and the people are exactly deserving alike, as are their rights to the fairest treatment possible from each to the other; and without that practice in vogue, the greatest general prosperity is not attainable.

The law creating the Railroad Commission in this State vests such body with power either upon complaint or upon its own motion after a hearing, to make a finding that any reciprocal demurrage is unreasonable or insufficient and to declare what shall be in the future a reasonable practice to be followed. The right naturally exists for shippers and consignees to claim and to receive demurrage, or reciprocal demurrage, from the railroads, for any and all reasonable delays in the supplying of cars to shippers, and for any unfair disadvantage arising therefrom. I am of the opinion that the present Railroad Commission under the law in this State, is empowered by the procedure adopted in such law to declare a reasonable rule and regulation concerning, as well as in a measure to define, reciprocal demurrage, and that said rule may be enforced by the Railroad Commission; and that if the Railroad Commission of this State does establish and undertake to put in force a fair and reasonable set of rules and regulations governing storage, demurrage, car service charges and of car detention charges, reciprocal demurrage for unreasonable delay in furnishing cars applied for, that they have such authority in law for so doing.

The State of Virginia, and I believe, also Georgia, and one or two other States, seem to have taken the lead within the last two or three years, in promulgating the theory and establishing the practice of reciprocal demurrage, as defined above. Their railroad commission laws and constitution are in many respects similar to those of this State. In fact, the workings of the Railroad Commission Law of Virginia, under the rules and regulations of the Commission, seem to be among the best and most satisfactory of any of the States. Among the twenty applicable, forceful and reasonable rules or regulations which that Commission has established, I herewith submit Rule No. 1 of the list:

RULE I.

"When a shipper makes verbal or written application to a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight and its final destination; the railroad company shall furnish same within four days from 7 o'clock a. m. the day following such application.

"Or, when the shipper making such application specifies a future day on which he desires to make a shipment, giving not less than four days' notice thereof, computing from 7 o'clock a. m. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application.

"For failure to comply with this rule, the company so offending shall forfeit and pay to the shipper applying the sum of \$1 per car per day, or fraction of a day's delay after expiration of the free time, upon demand in writing, made within thirty days thereafter by the shipper.

"Provided, however, that this rule shall not apply to shipments of coal and coke from mines and ovens."

Against the application and enforcement of this rule certain transportation companies appealed to the higher courts of that State. Such appeal was taken on the grounds that the Commission did not have power to maintain said rules, regulations and requirements, for the reason that it applied to and attempted to regulate or control interstate commerce and foreign commerce; and that rules attempted to give to the patrons of each of the transportation companies the use of their property without compensation. No objection, how-

ever, was made to the reasonableness or justness of the rules; but their validity was attacked upon the ground that each and all of them so far as they apply to interstate commerce and foreign commerce, are in violation of the commerce clause of the Constitution of the United States, and the acts of Congress pursuant thereto; and that certain of the rules make requirements that would deprive the appellants of the use of their property without due process of law and are, therefore, in violation of the Fourteenth Amendment of the Constitution of the United States.

In the review and the decision of this case, among other things, the court said:

RULE I.

"The questions raised on this appeal have been discussed at length, and very ably, both in writing and in oral argument, and are of great importance. They involve the right of the State, under its reserved power, whether that power be called police, governmental or legislative, to regulate the relative rights and duties of persons and corporations within its jurisdiction, so as to provide for the public good and the public convenience by laws which are not consistent with the constitution of the State, and which do not, by their operation, directly intrench upon the authority of the United States or violate some right protected by the Federal Constitution. To draw the line between the two fields of jurisdiction and to define and declare when a State regulation is an unconstitutional incroachment upon Federal power, is often a question very difficult to solve, even in a concrete case. But that difficulty is greatly increased and rendered well nigh impossible when a court is called upon to pass upon a body of rules and regulations, like those now under consideration, and to declare whether or not they, or any of them, in their operation, will directly intrench upon the authority of the United States, or violate some right protected by the Federal Constitution.

"The validity of the rules and regulations in question, so far as they apply to intra-state commerce, is not denied, except so far as they may, in their operation, deprive the appellants of the use of their property without compensation, but it is insisted that they are wholly valid, so far as they apply to interstate commerce and foreign commerce, upon the ground that that subject is wholly within the jurisdiction of the Federal Government.

"That this contention is not true, to the extent claimed, is well settled by numerous decisions of the Supreme Court of the United States.

"In the case of *Lake Shore, etc., R. R. Co. v. Ohio, etc.*, 173 U. S. 285, 297. Mr. Justice Harlan, speaking for the court, said that the cases of that court recognize 'the fundamental principle that outside of the field directly occupied by the general government, under the powers granted to it by the Constitution, all questions arising within a State that relate to its internal order or that involve the public convenience or the general good, are primarily for the determination of the State, and that its legislative enactments, relating to those subjects, and which are not inconsistent with the State constitution, are to be respected and enforced by the courts of the Union, if they do not by their operation directly intrench upon the authority of the United States or violate some right protected by the National Constitution. The power here referred to is, to use the words of Chief Justice Shaw, the power to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same.' (*Com. v. Alger*, 7 Cush 53, 85.)

"Mr. Cooley well said: 'It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing obligations of railway companies, as carriers of persons and goods, to accommodate the public impartially and to make any reasonable provision for carrying with safety and expedition.' (*Cooley's Const. Law*, 6th Ed., p. 715.)

"It may be that such legislation is not within the 'police power' of a State, as those words have been sometimes, although inaccurately, used. But, in our opinion, the power, whether called police, governmental or legislative, exists in each State, by appropriate enactments, not forbidden by its own constitution, or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and, therefore, to provide for the public convenience and the public good. This power in the State is entirely distinct from any power granted to the general government, although when exercised it may sometimes reach the subjects over which national legislation can be constitutionally extended.

"In the case of *Cleveland, etc., Ry. Co. v. Illinois*, 177 U. S.

514, 515. it was said that 'few classes of cases have become more common of recent years than those wherein the police power of the State over the vehicles of interstate commerce have been drawn in question. That such power exists and will be enforced, notwithstanding the constitutional authority of Congress to regulate such commerce, is evident from the large number of cases in which we have sustained the validity of local laws designed to secure the safety and comfort of passengers, employees, persons crossing railway tracks, and adjacent property owners, as well as other regulations intended for the public good.

"There being no objection made here to the reasonableness or justness of the rules and regulations in question, and their validity being attacked only to the extent of their application to interstate or foreign commerce, and in so far as they may deprive the appellants of the use of their property without due process of law, we are therefore of opinion that the said rules and regulations are reasonable, just and valid, except in so far as they may in their operation directly trench upon the commerce clause of the Constitution of the United States, or violate some right of the appellants protected by that instrument; and we are further of opinion that the question of their validity, so far as affected by the Constitution of the United States, may be raised and determined in any case in which that question could be raised and determined, if the rules and regulations in question had been enacted as statutes by the General Assembly, except as prohibited by Sub-section 'd' of Section 156 of the Constitution.

"Yours very truly,

"JOHN D. ATKINSON,
"Attorney General."

LIABILITY OF CARRIERS IN NEBRASKA

The Supreme Court of Nebraska has held that the general rule is that a common carrier of goods is an insurer of their safety as against loss or injury from any cause excepting the act of God or the public enemy. The case arose out of the shipment of household goods from Lafayette, Ind., to Lincoln, Neb. The goods were detained at Kansas City and caught by the great flood of May, 1903. In a suit for the value of the goods the lower court gave judgment for the plaintiff. Upon appeal, affirming the judgment, the court said:

"It is claimed by the railroad company that they shipped the goods within a reasonable time and delivered them to the connecting carrier at Kansas City in good condition. This may all be true, and still it is no answer to the plaintiff's claim. The common carrier of goods insures their safe delivery to the consignee against loss or injury from whatever cause arising, excepting only the act of God and the public enemy. The delivery of the goods to the carrier in good order, and their arrival at the place of destination in bad order, makes a prima facie case against the carrier. It then devolves upon it to show that the loss or damage was caused by the act of God or some other cause which would exempt it from liability. It may be conceded in the present case that the flood by which the goods were practically destroyed was an act of God, which, under ordinary circumstances, would relieve the company; but we think the rule supported by the weight of authority is that a common carrier is responsible for injury to goods by act of God if he departs from his line of duty, and while thus in fault, and in consequence of that fault, the goods are injured by an act of God which would not otherwise have produced the injury. Or, as stated in one of the cases, a common carrier is responsible for

injury to goods by act of God where the goods were exposed to injury by the carrier's inexcusable detention. *Read v. Spaulding*, 30 N. Y. 630, 86 Am. Dec. 426; *Michaels v. N. Y. C. R. Co.*, 30 N. Y. 564, 86 Am. Dec. 415. In *McClary v. S. C. & P. R. Co.*, 3 Neb. 44, 19 Am. Rep. 631, it is said: 'And it is held that if the carrier wrongfully delayed the transportation of goods, and because of the delay they are injured by a flood, the carrier would be liable'—citing *Lowe v. Moss*, 12 Ill. 477, and *Read v. Spaulding*, supra.

"In the absence of any showing to the contrary, it would seem that a delay of five days or more in the yards at Kansas City was an unreasonable delay, but there is evidence that the officer in charge of the United States Weather Bureau at Kansas City, on May 26, the date that these goods were delivered there, notified the public and all railroad companies of the coming flood, and warned them to guard their property in the lowlands, and that this notice continued from day to day until the flood had reached its height. Under this condition of affairs there can be no doubt of the negligence of the carrier, and that this negligence exposed the goods to the injury and damage that they afterward suffered by the act of God. It is further claimed by the defendant company that, in consideration of a reduced rate given to the plaintiff, he released it from all liability in excess of \$5 per hundred pounds. Our Constitution prohibits a common carrier from limiting its common law liability, and in *C. B. & Q. R. Co. v. Gardiner*, 51 Neb. 70, 70 N. W. 508, it was held: 'A limitation of the liability of a common carrier contained in a shipping contract will not be recognized or enforced in this State, though valid in the State where made, when such attempted restriction of liability is illegal and contrary to the public policy of this State.' This rule has been followed in numerous cases since and has become the settled law of the State."

(Wabash Ry. v. Sharpe, 107 N. W. 758.)

PENALTY FOR FAILURE TO TRANSPORT GOODS.

A statute of North Carolina makes it the duty of railways to receive for transportation all articles of the nature which they are accustomed to carry whenever tendered at a regular depot of the carrier, and upon failure to receive for transportation goods when so tendered, a penalty of \$50 per day is imposed. The Supreme Court of that State has held that where some cotton seed meal was left with the agent of the carrier, who held the goods in a warehouse from January 27 until February 8, pending the securing of the freight rate, such action constitutes a violation of the law, and the penalty was imposed. Suit was originally brought before a justice of the peace and damages awarded in the sum of \$200. (*Twitty v. Sou. Ry. Co.*, 53 S. E. 957).

BEFORE THE INTERSTATE COMMERCE COMMISSION

HEARINGS HELD

June 28, 1906, New Orleans, La.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.

July 12, 1906, Washington, D. C.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.

The Coal and Oil Hearings

During the past month several hearings were held by the Interstate Commerce Commission for the purpose of taking testimony under the Tillman-Gillespie resolution. Some additional evidence in regard to the bituminous coal situation was adduced, and at a hearing at New Orleans the matter of rates on oil was considered, together with charges of alleged discrimination and conspiracy on the part of the Standard Oil Company in the sale and purchase of oil. It was shown that the Galena Oil Company, a subsidiary of the Standard, had a monopoly of furnishing lubricating oil to railroads in the Southwest, which apparently caused general complaint among the independents.

The first witness at the New Orleans hearing was James W. Wyse, an oil dealer of Shreveport. He testified that he handles lubricating and fuel oil, which he obtains usually from the Ohio district. He cited instances of having shipped oil to Robeline, La., over the Texas & Pacific, the distance being 70 miles and the rate 15 cents. To Mansfield, 40 miles south of Shreveport, on the Texas & Pacific, the rate is 27 cents. T. J. Freeman, general solicitor of the Texas & Pacific, explained that these rates were fixed by the Louisiana Railroad Commission.

Continuing, Mr. Wyse stated that he shipped oil to Bodeau, 10 miles east of Shreveport, on the Vicksburg, Shreveport & Pacific Railroad, the rate being 23½ cents per hundred. He said that he was competing with the Standard Oil Company and the Southwestern Oil Company in selling at Boyce. Two years ago, before the Standard Oil Company erected tanks at Boyce, the rate to that point was 18 cents. Now that the Standard is in a position to supply that territory, the rate has been increased to 30 cents.

Mr. Wyse also testified that he had customers on the Kansas City Southern. To many the rate is 28 cents and the distance 70 miles. The rate from Shreveport to Marshall, Tex., he said, is 35 cents, the distance being 40 miles. To Mansfield, the same distance in an opposite direction, on the same railroad, the rate is 27 cents. The Waters-Pierce Oil Company has distributing facilities at Marshall, which enable that company to supply that section. Witness testified that he formerly shipped to Arkansas, but rates to points in that

State have been raised and the business stopped. He has been unable to do business in Mississippi, Alabama and Tennessee on account of rates.

"Occasionally," said Mr. Wyse, "I run out of a supply of oil, but experience has taught me not to try to buy from the Waters-Pierce Oil Company. When I have plenty of oil I can buy oil from them very cheap, but as my necessities increase their price goes up, until, when I am out of oil entirely, their price is so high that I cannot buy it. They seem to know exactly what the condition of my stock is, and regulate their prices accordingly.

"Prices to consumers also go up and down according as my supply is exhausted or plentiful. When I am in a position to compete the consumer gets his oil cheap. When I have no oil and cannot compete, the price to the consumer advances.

"Standard Oil employees were caught examining the tags on my barrels. J. F. Battle, Shreveport agent of the Texas & Pacific Railroad, according to a statement of my driver, caught employees of the Standard Oil Company examining the tags on my barrels, and told them he would kick them off the platform if they ever came back there again. I believe it has been customary for the Waters-Pierce Company to get this information regarding my shipments. J. B. Lipscomb, a railroad employee, told me that railroad employees are hired to give this information to the Waters-Pierce Oil Company."

Returning to the question of rates, Mr. Wyse said that six months ago he paid a rate of 15 cents to Mansfield, but that since that time the Waters-Pierce Oil Company has established tank facilities there, and the rate has been raised to 27 cents.

"At Minden, La., the Waters-Pierce Oil Company has a tank station," said Mr. Wyse. "Beyond that point, on the Vicksburg, Shreveport & Pacific, I am unable to ship my goods. I cannot ship over the Texas & Pacific north of Shreveport, but I can ship north of Shreveport on the Kansas City Southern. The rates to Zwolle are jobbers' rates and are not published.

"The only advantage I have over the Waters-Pierce Oil Company in conducting my business is that there are many people who do not like the way that company does business and will not patronize it. I sell better oil than the Waters-Pierce Company does, but I do not sell a customer after I have sold him once. The Waters-Pierce Oil Company either cuts the price or manages in some way to sell the customer next time."

Responding to questions by Commissioner Prouty, Mr. Wyse stated that he had a tank station at Shreveport and brought the oil there in tank cars. He sells oil in Shreveport from a tank wagon, and goes out in the country for a distance of about 15 miles. Beyond that distance he cannot compete. He has never been able to get a supply of oil from Texas or Indian Territory

or Kansas on account of freight rates being too high from Indian Territory and Kansas, and the price of oil too high in Texas. The witness said there was no competition between the Standard Oil Company and the Waters-Pierce Oil Company in Shreveport. He also knew that there was no competition between the Waters-Pierce Oil Company and the Southwestern Oil Company, because the price at which both sold oil rose and fell together. Mr. Wyse said he paid 47½ cents freight on oil from the Ohio territory. During a discussion as to the relation of distance and rates, Judge Freeman stated that the rate from Ohio was fixed by the Mississippi River, and that that was the reason it was cheaper to get oil from Ohio than from Texas or Kansas or Indian Territory.

"It has been our experience," said Commissioner Prouty, "that the Standard Oil Company fixes rates on oil, and not the Mississippi River. Between Chicago and St. Louis there is no Mississippi River, and the Standard Oil Company enjoys the lowest rate there that we have found."

T. C. Anderson was the next witness. He described himself as president of the Record Oil Company and his occupation as "oils." He stated that his refinery was in the St. Bernard Parish, 6 or 8 miles below New Orleans. He said:

"We get our crude oil from Southern Texas. It is piped on barges or ships and conveyed right to our wharf, where it is unloaded at our refinery. We get oil principally from Port Arthur, Humble and Petrolia, and some is bought from the Waters-Pierce Oil Company when it can be bought cheap enough. We also get crude oil from Petrolia, Tex.; from the Clayco Oil & Pipe Line Company, and this is shipped by rail, Southern Pacific tank cars being used. The rate on this is 18 cents. We also buy oil from the Ohio territory when we can get it."

Witness testified that he could not sell oil in Shreveport, and that Shreveport dealers could not sell oil in New Orleans, because of the freight rates, and that his company had made numerous efforts to buy Indian Territory oil, because of its superior qualities, but had found it impossible to do so because of freight rates.

Mr. Anderson said that he had tried to sell lubricating oils to railroads. This was apparently a sore point with him. He claimed that he had made repeated offers to all the railroads entering New Orleans to sell them a better grade of oil than they could get from the Galena Oil Company, a Standard Oil concern, for 50 per cent. less than the Galena Oil Company was selling it, and he had invariably failed even to get an answer from the railroads which he addressed. He had attempted to sell his oils to the New Orleans & Northeastern Railroad, and to the New Orleans Terminal Company and others, but had always met with failure. He could not understand why the railroads insisted on paying the Galena Oil Company 50 per cent. more for oil than better oil could be obtained for elsewhere.

Mr. Anderson said that when he bought oil from the Standard Oil Company, which was shipped from the Ohio field to New Orleans, the freight rate was invariably prepaid. He could not understand why this was so, unless it was because the Standard Oil Company gets lower rates than anybody else.

Upon the matter of these rates, a somewhat heated discussion took place between Commissioner Prouty and Mr. Carey, counsel for the Standard Oil Company. Upon the subject of the recently discovered rate between Chicago and East St. Louis, Commissioner Prouty contended that the Garfield report showed that the Standard was shipping oil from Chicago to East St. Louis for 6 and 6½ cents, without the knowledge of any one, while independents were being charged 18 cents. Mr. Carey contended that the rate had been filed with the Commission, which Commissioner Prouty flatly denied, saying:

"The fact is, that the Standard Oil Company for years paid this rate of 6½ cents, while the published rate by most lines was 18 cents, while no jobber paid less than 18 cents, and while the rates from competing Ohio and Pennsylvania fields were constructed on a basis of 18 cents from Chicago to East St. Louis."

W. O. Hudson, of New Orleans, secretary, treasurer and manager of the Marine Oil Company, testified that he was formerly an employe of the Standard Oil Company. During his testimony he told how he had severed his connection with the Standard Oil Company five years ago. The Dixie Oil Company was in control of the oil market in New Orleans, and he was sent there from Cincinnati to put the Dixie Company out of business. "If you succeed," his manager told him, "there is nothing you may ask that you cannot get. This comes from New York." With that understanding he went to New Orleans and looked over the field. Within twelve months he bought out the Dixie Oil Company and ran it ostensibly as an independent concern. Really it was a Standard concern, and the price of oil went up after it was bought.

After completing the job Mr. Hudson asked for the "anything" he had been promised. It was not forthcoming, and he quit the Standard. He went with Woodward, Wight & Co., of New Orleans, and arrangements were made to go into the oil business. He was to get a salary of \$2,400 and 20 per cent. of the profits. He was with them fifteen days. The Standard sent for Woodward, Wight & Co. and paid them \$30,000 not to go into the oil business for five years. Mr. Hudson got 20 per cent. of this, or \$6,000, and with this amount he started the Marine Oil Company.

Mr. Hudson also told how he had put the Red Sea Oil Company out of business at Pilzer, S. C. He was ordered there by the New Orleans manager to get a car of Red Sea oil canceled. His instructions were, if he got it canceled, to wire a Mr. Collins, of the Cincinnati office. If he could not get it canceled, he was to get several friends there to sell Standard Oil lower than the cost of the car of Red Sea oil. He could not get

the car canceled, but did get friends to sell oil for 11 cents, which was 1 cent less than the cost of the Red Sea car of oil. Circulars were issued, and within a few months the agent of the Red Sea Oil Company was given a position with the Standard, and all the Red Sea oil there was bought up by the Standard at a discount and was hauled away and stored in the Standard warehouses.

Mr. Hudson testified that one of his duties with the Standard Oil Company was to obtain contracts with the railroads for the purchase of lubricating oils. The last contract he made, he said, was with the Gulf & Ship Island Railroad. He made these contracts with the Galena Oil Company, and was given power to make a guarantee to furnish oil to the railroads for 10 per cent. less than they were paying other oil concerns with which they had contracts. Since he left the Standard he had frequently tried to make contracts with railroads, but had failed except in the case of one railroad, the Mississippi Central.

J. Edward Crusel, of New Orleans, a stock broker and oil producer, testified regarding conditions in the Jennings field. He said that the pipe lines in that field controlled the loading tracks, and that they only allowed cars to producers as they pleased, cars being obtainable from no other source. He did not believe that the railroad was discriminating in favor of any one, and said that the rates on the Southern Pacific had not been changed for several years.

T. K. Gay, of Little Rock, manager of the Gay Oil Company, said that he competed with the Waters-Pierce Oil Company in Arkansas, and that the Waters-Pierce Oil Company kept startlingly well informed regarding his business affairs, knowing exactly how much oil he had and when he would run out of oil of specified grades. He said an agent of the Waters-Pierce Company had gone so far as to bet with one of Gay's customers that Gay would be out of a certain kind of oil within a specified time.

Mr. Gay charged that the Iron Mountain Railroad agent at Earl, Ark., and agents at several other points in Arkansas on the Iron Mountain Railroad, are also agents of the Waters-Pierce Oil Company. He said that he shipped a carload of oil to a customer at Earl and the agent failed to notify the customer that the oil had arrived, the result being heavy demurrage and other loss. Mr. Gay also stated that under the Arkansas law the oil inspectors, who are appointed by the county judge of each county, have a right to charge as much as 25 cents a barrel for inspecting oil. By agreement, they charge the Waters-Pierce Oil Company 10 cents for the inspection, but independent concerns are called upon to pay 25 cents.

M. W. Wilbourn, of the National Refining Company of Tennessee, testified that his salesmen had been arrested in Arkansas for selling oil under the State test merely to ruin his business. He charged that in some cases the inspectors also acted as agents of the Waters-Pierce Oil Company; that they passed oil for

the Waters-Pierce Oil Company that was below the Standard, and discriminated against him generally.

Filing documents and affidavits to substantiate his testimony, Mr. Wilbourn testified that the oil inspectors in Arkansas received notice of time of the prospective arrival of his shipments. On several occasions his salesmen have been arrested at the instigation of the inspectors and forced to leave the town to avoid prosecution on charges of having sold oil below the State test. One such agent was arrested at Clarendon, Ark., while the grand jury was in session. Wilbourn was communicated with and ordered the salesman to stand by the goods. A delegation, headed by the Waters-Pierce agent, who was on the grand jury, waited on the agent and told him the charges against him would be dropped if he would leave the city. He refused to leave, and declared he would go before the grand jury and tell everything. The case never came to trial.

A number of other witnesses were examined at this hearing, their testimony bearing chiefly upon the competitive practices of the Standard Oil Company and its subsidiary concerns. It is understood that no more hearings will be held under the Tillman-Gillespie resolution until September.

Investigation in Regard to Block Signal Systems and Appliances Directed by Congress

On June 30, 1906, the President approved the joint resolution of Congress directing the Interstate Commerce Commission to investigate and report on block signal systems and appliances for the automatic control of railway trains. This resolution, which has the force of law, is as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission be and it is hereby directed to investigate and report on the use of and necessity for block signal systems and appliances for the automatic control of railway trains in the United States. For this purpose the Commission is authorized to employ persons who are familiar with the subject, and may use such of its own employees as are necessary to make a thorough examination into the matter.

In transmitting its report to the Congress the Commission shall recommend such legislation as to the Commission seems advisable.

To carry out and give effect to the provisions of this resolution the Commission shall have power to issue subpoenas, administer oaths, examine witnesses, require the production of books and papers, and receive depositions taken before any proper officer in any State or Territory of the United States.

The Senate Orders an Investigation of Practices in Connection With the Transportation and Elevation of Grain

During the closing hours of the past session of Congress, the Senate adopted a resolution directing the Interstate Commerce Commission to make a thorough investigation of the practices of common carriers in connection with the receipt, transportation, elevation, storage and delivery of grain. Acting under this resolution, the Interstate Commerce Commission, on July

12, 1906, addressed the following letter of inquiry to all operating railroads in the United States:

"The Senate of the United States, on June 25, 1906, adopted the following resolution:

Resolved by the Senate, That the Interstate Commerce Commission is hereby directed to make a thorough investigation of the elevator and grain buying and forwarding business of this country, to determine to what extent special favors have been granted to them by railroad companies; the influence which the alleged monopolizing of this branch of business has had upon the market; the injury it has worked to the grain producers; the extent to which the railroads, their officers, directors, stockholders and employees, own or control the grain buying and grain forwarding companies; and the manner in which these railroads, their officers, directors, stockholders and employees secured holdings, if any, in these grain buying, storing and forwarding companies, and to report the same to the Congress at its next session.

"Pursuant to such resolution the Commission has this day, by order duly entered, instituted an inquiry and investigation entitled In the Matter of the Relations of Common Carriers Subject to the Act to Regulate Commerce to the Ownership and Operation of Elevators and the Buying, Selling and Forwarding of Grain.

"In the judgment of the Commission this investigation involves and requires securing immediately the following items of information from carriers engaged in the transportation of grain as interstate commerce, and your company is requested and directed to file with the Commission specific statements embodying such information with all practicable dispatch, and not later than August 15, 1906.

1. The name and location of each and every grain elevator upon or along any line of railroad of your company, or upon any switch, sidetrack or spur therefrom; the capacity thereof, if known to your company; and which of such elevators, if any, are used solely for grain owned or handled and shipped by the operator thereof.

2. The name and post office address of each person, firm, company or corporation operating every such elevator; and, if known to your company, whether the same is operated by the actual owner thereof, or under lease or other contract or agreement for use, and if the latter, the name and post office address of the actual owner of every such elevator.

3. Which, if any, of the elevators referred to in Item 1 hereof are located upon the right of way or land of your company, the terms and conditions upon which the use of such right of way or land was and is allowed, and whether the like privilege is open to all persons desiring to build and use an elevator along your line.

4. What, if any, interest through stock ownership or otherwise your company has in any elevator as property, or in the operation thereof. Under this heading describe fully all of the relations of your company with each and every elevator along its line, including not only any ownership or part ownership it may have therein, or financial interest in the operation thereof, but also any and all allowances which may be made to any elevator, or the operator thereof, by your company. Also state specifically which, if any, operator of any elevator in which your company has an interest, or to which it makes an allowance in money or otherwise for the elevation or transfer of grain, is a shipper of grain over your company's line. File with your statement hereunder copies of all leases, contracts, or other agreements between your company and the owners or operators of elevators along or adjacent to your line or lines of road.

5. The names and post office addresses of the ten persons, firms, companies or corporations who have been the largest shippers of grain over your company's line since the 30th day of June, 1905; and if known to your company, what, if any, interest each or any of such shippers had during the time since June 30, 1905, in any elevator operated along or adjacent to your company's line or lines of road.

6. The extent, if any, to which your company is, or since June 30, 1905, has been engaged in the buying or selling of grain, either directly or indirectly, through interest by stock ownership or otherwise, in firms, companies or corporations engaged wholly or partially in that business.

7. The extent, so far as is known or can readily be ascertained, to which any officer, director or employee of your company is, or since June 30, 1905, has been engaged in the ownership or operation of any elevator or in the buying or selling of grain, either directly or indirectly, through interest by stock ownership or otherwise, in firms, companies or corporations engaged wholly or partially in owning or operating an elevator or in buying and selling grain. Give like information as to stockholders in your company, so far as the same may be known.

8. A description of all special facilities or privileges which your company, during the three years last passed, has provided or granted, under stress of competition or other conditions, with a view of maintaining or increasing the volume of traffic in grain over its line or lines of railroad, giving in detail the particular reasons for the provision or granting of such special facilities or privileges, and stating also whether the enjoyment of any such special facility or privilege depends upon the amount of grain shipped at any one time, or the amount of grain shipped during a given period.

9. A list or statement showing in detail the methods of your company in the distribution of cars for the shipment of grain. This statement should be accompanied by a sample of any and all distribution sheets and an explanation of your car distribution system.

It is expected that a series of hearings will be ordered by the Commission after it has had an opportunity to consider the replies filed by the carriers.

This investigation will doubtless be of vital interest to the carriers as well as the public generally. It will be remembered that under the provisions of the so called "commodity amendment" of the new rate bill it will be unlawful, after June 1, 1908, for any railroad company to transport any article or commodity, except lumber and its products, in which it has any interest, direct or indirect. While this amendment was no doubt suggested by the facts brought to light in the coal and oil investigation, it applies with equal force to the matter of the transportation of grain. It would appear, therefore, that in addition to furnishing the information requested by the Senate, the present investigation ought to elicit facts which will be of value in the enforcement of the provisions of the new rate bill.

As part of this elevator and grain investigation, and also upon petitions filed by the Chicago Great Western Railway Company, Chicago, Burlington & Quincy Railway Company, and the Atchison, Topeka & Santa Fé Railway Company, the Commission has reopened the old Union Pacific elevator case, which was entitled "In the Matter of Allowances to Elevators by the Union Pacific Railroad Company." The order of the Commission provides that all persons interested shall have an opportunity to present further testimony and

argument upon the matters involved at such time and place as will be later on designated by the Commission.

Reconsignment Rates at East St. Louis—Decision of Interstate Commerce Commission Sustained by United States Circuit Court

As the result of an investigation held by the Interstate Commerce Commission, upon complaint of the St. Louis Hay & Grain Company, it appeared that the Southern Railway Company, in transporting from St. Louis to Southeastern points hay in carloads, originating north and east of East St. Louis, exacted 4 cents per 100 pounds in addition to the rate to such destination from Ohio River points when the hay was unloaded at warehouses in East St. Louis and afterward reconsigned to southeastern points, but only 2 cents per 100 pounds in addition to such rates when not so unloaded. The Commission found the higher rate on unloaded and reconsigned shipments from St. Louis unjust, unreasonable and unlawful, and awarded reparation to the extent of 1 cent per 100 pounds upon shipments made by the St. Louis Hay & Grain Company. Suit was brought by the complainant to enforce the Commission's order, and on June 25, 1906, the United States Circuit Court for the Eastern District of Illinois handed down a decision sustaining the Commission's order of reparation. The court held that the findings of fact of the Commission and its order of reparation were justified by the evidence, and rendered judgment for \$1,659.41, with costs and attorney's fee.

In its opinion the court held that the following findings of fact had been made by the Interstate Commerce Commission, and adopted the same as its own special findings of fact in this case:

1. Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern territory, and much of it is carried through the East St. Louis gateway and passes over defendant's lines of railway from East St. Louis to points south of the Ohio River. With the exception of the Illinois Central, defendants' lines terminate at East St. Louis, and generally, also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point.

2. For the transportation from East St. Louis to said Southeastern points defendants apply a proportional rate, which is 2 cents per 100 pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis or through billed from the point of origin to the point of final destination, and regardless of provisions in their tariffs concerning through billing; but if the hay is unloaded at a warehouse in East St. Louis defendants exact for the transportation thereof from East St. Louis to said Southeastern points a rate which is 4 cents per 100 pounds greater than the rate from the Ohio River to said Southeastern points.

3. Complainant operates two warehouses at East St. Louis, and most of the hay it handles it purchases on the track at East St. Louis, unloads, inspects, assort and reloads at said warehouses, and sells at said Southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition complainant, therefore, is prejudiced to the extent of 2 cents per 100 pounds by defendants' method of applying rates of transportation as aforesaid. Defendants claim this 2-cent difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform.

4. At East St. Louis transfers of loaded cars from the Northern to the Southern lines and transfers of empty cars from the Southern to the Northern lines are generally made by a connecting railroad company, and the charge made by that company for such service is \$4 per car when the hay is unloaded as aforesaid, but only \$2 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay south from East St. Louis.

5. When hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service so furnished is fairly worth from 40 to 60 cents per car.

6. This car is in use from two to three days longer when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day.

7. When hay is unloaded and reloaded at warehouses as aforesaid, the time consumed in doing the work averages from six to eight hours, but the expense of such unloading and reloading is borne entirely by the shipper.

8. Shipments of hay to which the rate of 2 cents per 100 pounds above the rate from the Ohio River is applied as aforesaid, and which are not unloaded at East St. Louis warehouses, are frequently transferred from one car to another in the railroad yards at East St. Louis, either because cars in which the hay is shipped to East St. Louis from the North are out of repair, or because the Northern lines are not willing to allow their cars to go South from East St. Louis. The expense of such transfer is from \$1.25 to \$1.50 per car, and this expense is entirely borne by the carrier which hauls the hay south from East St. Louis.

9. The transfer charge of \$4 per car above mentioned was formerly \$3 per car, and the transfer charge of \$2 per car above mentioned was formerly \$1.50 per car.

10. The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of the reconsigned hay.

11. Cars from the North, after being unloaded at

warehouses as aforesaid, are frequently reloaded for the South, thus avoiding expense to the Southern line of placing an empty car and subtracting perhaps a day from the additional time of the car service.

12. That, taking everything into account, the average additional expense to the Southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from \$2 to \$2.50 per car, which is equivalent on the average loading of hay to about 1 cent per 100 pounds.

13. Much of the hay which actually passes through East St. Louis might reach its Southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

14. That complainant actually paid to the Southern Railway Company on reconsigned shipments of hay, at the rate of 2 cents per 100 pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of \$3,144.17.

The conclusions of the court are as follows:

"From the evidence heard and adduced on the trial of this cause in this court, the court finds that the said findings of fact by the said Interstate Commerce Commission are supported and justified by the said evidence, and it is ordered that the said findings of fact as above recited and set out be and the same are adopted as the special findings of fact of the court, and that the same be set out in the records of this court accordingly.

"It is therefore considered, ordered and adjudged by the court that the plaintiff herein have and recover of the defendant herein the sum of \$1,659.41, the same being the amount of reparation awarded by the said Commission to the plaintiff against the defendant, with 5 per cent. interest from the date of said award, and it is further ordered and adjudged by the court that the plaintiff have and recover of the defendant its costs herein to be taxed, including a reasonable attorney's fee to be hereafter fixed, and that execution issue against the defendant for the amounts of the said judgment and the said costs."

The defendant was given sixty days from the date of the decision in which to file a bill of exceptions, if it so desired.

This case is important upon the subject of reparation awards by the Commission, and is also understood to determine other claims of like character arising at St. Louis or East St. Louis, aggregating a very large amount of money. The case will doubtless be appealed.

Rebates to Packing House Company

In the United States District Court for the Western District of Missouri, the Chicago & Alton Railway Company, and John N. Faithorn and Fred A. Wann, former officials of that company, were on July 6 found guilty on eight counts of the indictment of granting rebates from the published tariff rates to the Schwarzschild & Sulzberger Company, on shipments of packing house products from their Kansas City plant. The defendants immediately applied for a new trial, and on July 11, after argument upon such application, which was refused, Judge Landis imposed the following fines: Chicago & Alton Railway Company, \$20,000 on each of two counts, or \$40,000 in all; John N. Faithorn, \$5,000 on each of two counts, or \$10,000 in all; Fred A. Wann, \$5,000 on each of two counts, or \$10,000 in all.

The indictments upon which the above named defendants were tried were returned December 15, 1905, and charged them with granting rebates to the Schwarzschild & Sulzberger Company, in violation of the Elkins Law. It was shown by the Government that the Chicago & Alton had charged \$4 per car for handling the products of the packing house company at Kansas City, and had repaid the packing company \$1 on each car. The prosecution claimed and the court held that the failure of the railroad company to publish in its tariff sheet the fact that the \$1 was repaid made it a secret rebate. It was claimed by the defendants that the refund of \$1 per car was necessary, because the packing company owned the railroad track near its plant, and compelled the railroad company to pay that amount for trackage when it hauled the cars away. The court, in its charge to the jury, disagreed with this contention, and declared that the payment of the \$1 per car constituted a secret and illegal rebate.

Bills of exception were filed by the defendants and a bond was filed pending appeal to the United States Circuit Court of Appeals.

The Conspiracy Statute Held Not to Be Applicable to Violations of the Elkins Law

In the United States District Court for the Southern District of New York, Judge Holt, on July 6, 1906, rendered a decision the effect of which is to dismiss the indictments found under Section 5440 of the Revised Statutes (the so called conspiracy statute) against Nathan Guilford, vice president, and F. S. Pomeroy, traffic manager, of the New York Central & Hudson River Railroad Company, and C. Goodloe Edgar and Edwin Earle, sugar merchants, of Detroit.

The grand jury on May 4, 1906, returned an indictment charging the above named defendants with violations of the Elkins Act in the granting and receiving of rebates on shipments of sugar from New York to Detroit, and also with conspiring to violate the Elkins Act, in violation of Section 5440 of the Revised Statutes. Violation of Section 5440 of the Revised Statutes is punishable by imprisonment as well as fine. By

this decision the court holds that Congress did not intend that a violation of the Elkins Act should be punished by imprisonment, and that the only penalty for a violation of that act is the fine imposed therein. The indictments returned under the Elkins Act were sustained in their entirety, and the trial will proceed upon such indictments.

In this connection it should be noted that the recent rate bill amends Section 1 of the Elkins Law so as to restore the penalty of imprisonment for the granting of rebates. This penalty, however, would not be applicable in an action commenced before the approval of such amendment.

Decision Under the Safety Appliance Act

An important decision, construing the Safety Appliance Act, has recently been rendered by the United States District Court for the Southern District of Illinois, in the case of *United States v. Chicago, P. & St. L. Ry. Co. et al.* (143 Fed. Rep. 352). This was an action begun by the United States Attorney, upon direction of the Attorney General, at the request of the Interstate Commerce Commission, in accordance with Section 6 of the Act of March 2, 1893, as amended, to recover a penalty of \$200 for violations of that act.

The court held that in a joint action against two or more railroad companies to recover the penalty for violation of the Safety Appliance Act of March 2, 1893, there may be a recovery against any or all of the defendants, as the proof warrants, and that a railroad company which hauls over its line within a State a car of another railroad company employed in moving interstate traffic consigned to a point in another State, which car is not equipped with the appliances required by the Safety Appliance Act, is liable for the penalty imposed by that act.

Right of Coal Mines to Connect Switch Tracks and Duty of Carriers to Accept Shipments

The case of *Olanda Coal Mining Company v. Beech Creek Railroad Company et al.*, recently decided by the District Court for the Western District of Pennsylvania (144 Fed. Rep. 150), is of general interest and importance to shippers of coal, for, although decided under the Constitution of the State of Pennsylvania, some of the conclusions of the court are general in their application. The court held that, under the Constitution and the statutes of Pennsylvania, which make all railroads public highways and all railroad companies common carriers, the owner of coal mining property adjoining the right of way of a railroad is entitled, as a matter of right, to connect switch tracks built on his own land with the track of such road, to facilitate the loading and shipping of coal; and that a railroad company cannot refuse to accept and transport coal tendered by a shipper, on the ground that it is of inferior quality to other coal also produced on its line, and that the marketing of such coal will injuri-

ously affect the sale and consequently the shipment of the superior quality.

The Olanda Coal Mining Company, on August 1, 1904, brought a bill in equity in a Pennsylvania court against the Beech Creek Railroad Company, a corporation of that State, and its lessee, the New York Central & Hudson River Railroad Company, a corporation of the State of New York. The latter company alleged itself to be the real and only party in interest, and removed the case to the United States Circuit Court. The opinion of the court, by Judge Buffington, is in part as follows:

"Passing by the many irrelevant matters and proofs in the voluminous record, we address ourselves to the gist of the bill, which, in substance, is to compel the railroad to permit switch connections with its line to enable complainant to ship its coal to market. The latter is a coal mining corporation, chartered July 9, 1903, and by its charter is authorized to carry on the business "of mining, shipping and selling of coal, and the manufacturing, shipping and selling of coke and other products of coal." Its mining property of some 610 acres contains approximately 550 acres of coal, in which are several different veins. The property adjoins the right of way of the railroad. It has no other outlet for its coal save said road. The Beech Creek Railroad Company was chartered under the provisions of the General Railroad Act of Pennsylvania of April 4, 1868, and its supplements. It leased its property to the New York Central Railroad Company by a long term lease. It is conceded that all its duties and obligations rest on its lessee, the New York company. By virtue of the Constitution of Pennsylvania (Article 17, Section 1), which provides: "All railroads and canals shall be public highways, and all railroads and canal companies shall be common carriers," and the General Railroad Law of February 19, 1849, which provides: "Upon the completion of any railroad authorized as aforesaid, the same shall be esteemed a public highway for the convenience of passengers and the transportation of freight," the Beech Creek Railroad is a public highway and is chargeable with the duties and obligations of a common carrier. Such is the view of the highest courts of that State. In *Railroad Company v. Colwell* (39 Pa. 339) it is said:

"Though a corporation in respect to its capital is private, yet it was created to accomplish objects in which the public have a direct interest, and its authority to hold land was conferred that these objects might be worked out."

"And this accords with the general Federal view. 'The question,' says the Supreme Court of the United States, in *Cherokee Nation v. Southern Kansas Railroad Company* (135 U. S. 657), 'is no longer an open one, as to whether a railroad is a public highway, established primarily for the convenience of the people and to subserve public ends.' Its road, then, being a public highway, and it a common carrier, its duty, generally stated, is to receive from any person for carriage and transportation such freight as the carrier

holds itself out as willing to carry and the party sending offers to pay freight upon. Now, in mining, coal is carried from the mines in small cars and delivered to and carried by railroad companies in carload lots. To do this requires sidings, on which the railroad's cars may be conveniently handled and filled. Such a connection the complainant asks, and is willing to bear the expense of making. Whatever may be the rights of shippers and the obligations of railroads in other jurisdictions, the general right of the adjoining property holders in Pennsylvania to such connection with a railroad chartered by that State has been decided by the highest court of that State in the case of the *Pittsburg & Lake Erie Railroad Company v. Robinson* (95 Pa. 428). There Robinson was the owner of a manufacturing site adjoining the railroad, and the question was the value of the land which the railroad was condemning in part. It was held that the property owner had a right to switch connection with the railroad, and that this right was an element in determining the value of his land, and the proposition 'that the defendant company is a common carrier, that its railroad is a public highway, that the plaintiffs have a right in law to construct on their land, adjoining said railroad, a suitable switch for the uses of their business, and connect the same with the tracks of the defendant company, subject to the general rules of said company regulating such connections, and that the defendant company is bound to receive and deliver to and from such switch or siding cars and freight for the said plaintiffs to and from such points on the line of defendant's railroad as may be designated by plaintiffs, and on equal terms with all other individuals or transportation companies,' was held a proper definition of his rights in that regard.

"Under this construction thus placed upon its own laws by the court of highest resort in Pennsylvania, the right of a mine operator to proper and reasonable switch connections is clear, unless there is something in the facts and circumstances of the particular case warranting a refusal of this right. We find none here. The complainant offers to bear the entire expense of the connection and siding. It is willing that the connection be made in the mode and at the point the respondent prefers. We are not impressed with the contention of the respondent that there are engineering difficulties in locating a switch to reach a siding for the complainant. No such question was raised during the many interviews between these parties prior to the refusal of the railroad company to grant a switch connection. The answer to the bill by the New York Central Railroad Company avers no such difficulties. On the contrary, the answer admitted 'that it is abundantly able to grant the siding and the track connections with its road, and has granted unto Irish Brothers, miners and shippers of coal, a siding or track connection, and has also granted and constructed other sidings and switch connections for other lessees of coal and operators along the line of the Pennsylvania Division of the New York Central & Hudson River Rail-

road, meaning thereby the Beech Creek Railroad.' It was not until a year after the answer was filed that the question of engineering difficulties was raised by an amendment then made. Under the proceedings and proofs we are of opinion, and so find, that the respondent has failed to show the existence of any engineering difficulties, hazards or operating difficulties which makes it unreasonable, unwise or inequitable for a chancellor to grant the prayer of this bill.

"The second contention of the railroad is that the coal carried by the Beech Creek road has gained a high reputation in the market, which has inured to the benefit of the road as a coal carrier and increased its trade; that the complainant's coal is of an inferior character, and its introduction into the market would injuriously affect the reputation of the coal market from that section, and so injure and decrease the carrying business of the road. We have been cited to no power or right vested in a common carrier to thus refuse to transport freight of the general class it is carrying because of the inferiority of the particular lot in question. The all sufficient answer to a claim on the part of a common carrier to exercise such a power is simply that it does not exist, and the proofs in this case do not satisfy us that, if it did, the respondent has shown by the weight of proof that its contention as to the character of complainant's coal is established, or that any such damage as is here averred to its business as a common carrier would ensue."

Self-Incrimination and Immunity of Witnesses

The President on June 30, 1906, approved the bill introduced by Senator Knox and passed by Congress, defining the right of immunity of witnesses under the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and other acts of a similar nature relating to testimony before the Interstate Commerce Commission and the Bureau of Corporations. By this act it is declared that the immunity provisions in the act entitled "An act in relation to testimony before the Interstate Commerce Commission" and other similar acts shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

It will be recalled that the President urgently requested the passage of such an act in his message relative to the decision of Judge Humphrey in the prosecution by the Department of Justice of the Chicago packers for alleged violation of the Sherman Anti-Trust Law. In this decision the packers were granted immunity because of the previous investigation into their business methods conducted by the Bureau of Corporations. It is believed that this act limits the right of immunity in conformity with the recent famous decision of the United States Supreme Court in the case of *Hale v. Henkel*, and will reduce to a minimum the possibilities of the so-called "immunity bath."

New Members of the Commission

The nomination made early in the last session of Congress of Hon. Franklin K. Lane, of California, to be an Interstate Commerce Commissioner in place of Hon. Joseph W. Fifer, resigned, was finally confirmed by the Senate just previous to adjournment. Mr. Lane has taken the oath of office and is therefore a full member of the board.

Since the adjournment of Congress, under the provisions of the new rate bill, which enlarges the Commission to seven members, the President has appointed Hon. Edgar E. Clark, of Cedar Rapids, who has been grand chief of the Order of Railway Conductors, to one of the new places on the Commission. Commissioner Clark's duties cannot commence until the new law takes effect on August 28.

Carriers and the Commission

On Tuesday, July 31, the Interstate Commerce Commission held a conference with J. C. Stubbs, traffic director of the Union Pacific system, and other Western railroad officials, constituting a delegation of the Western trunk lines, in relation to the duties of the carriers under the amended law as to the contents, publication and filing of rate schedules.

On July 25 the Commission issued the following:

"The Commission calls your special attention to the following provisions and requirements of the sixth section of the Act to Regulate Commerce, as amended by act of Congress approved June 29, 1906, and which takes effect August 28, 1906, to wit:

Filing of Schedules

Sec. 6. That every common carrier subject to the provisions of this act shall file with the Commission created by this act, and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route, and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight respectively are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation and facilities defined in this act.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through

a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

No change shall be made in the rates, fares and charges or joint rates, fares and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public, published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates, fares or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Every common carrier subject to this act shall also file with said Commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: Provided, That wherever the word "carrier" occurs in this act it shall be held to mean "common carrier."

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

"It is manifest that existing schedules must be changed or amended to bring them into full compliance with the provisions of law above set forth. These changes or amendments can be made most satisfactorily, and at the same time with greater uniformity, through the prompt action and co-operation of all carriers subject to the law, and to that end such carriers, through special committees or their representatives in traffic associations, are requested to immediately confer and thereupon propose to the Commission such methods of procedure respecting the changes necessary to be made in tariff construction, including the simplification of present rules and regulations and of exceptions to the application of specified rates, the definite statement of joint routes upon which through rates are to apply, and appropriate means of certainly indicating evidence of concurrence in joint through rates both to the Commission and to the public, while at the same

time providing for plainly showing upon suitable schedules the services and the various charges required by the law to be published and filed.

"The Commission is of the opinion that this duty should rest primarily with the carriers themselves, in view of their liability to forfeitures and penalties in cases of failure to comply with the mandatory requirements of the sixth section. The Commission will, however, cordially co-operate with representatives of the carriers, and will freely discuss with them all pertinent questions which in this connection may arise, reserving always its right to make at such times as may appear necessary any general or special order or orders within the scope of its authority. Methods so proposed by carriers should embrace those designed to effectuate immediate substantial compliance with the amended law as well as those intended to be permanently applicable."

No Test of the New Rate Law Yet Decided Upon

It is not exactly true, as stated by a Chicago newspaper, that arrangements are being perfected by the Receivers' and Shippers' Association of Cincinnati, aided by the traffic committee of the Chicago Commercial Association, for a complete test of the new Interstate Commerce Law as soon as it goes into effect. It is understood that there has been some correspondence between the associations named concerning this matter, but no definite action has been decided upon.

The Original Complaint

The complainants before the Interstate Commerce Commission in the original case were the freight bureau of the Cincinnati Chamber of Commerce and the Chicago freight bureau. The three railroad systems that are particularly complained of now are the Southern Railway, the Atlantic Coast Line and the Louisville & Nashville, which last is controlled by the Coast Line.

The general ground of complaint is that the rates of freight established from the Eastern seaboard, from Baltimore, Philadelphia, New York, Boston and contiguous territory to the Southern territory—namely, Knoxville and Chattanooga, Tenn.; Rome and Atlanta, Ga.; Birmingham, Anniston and Selma, Ala.; Meridian, Miss., and contiguous territory, were unjustly discriminatory in favor of the merchants located in the eastern seaboard territory, as against those located in central territory; that is, Cincinnati, Louisville, Indianapolis, Evansville, Chicago, Cairo, St. Louis, etc.

High Rates From the West

The burden of the complaint is against the relation which exists between the current rates of freight on manufactured articles and merchandise from the Eastern territory to the Southern territory, and the rates exacted upon like commodities when shipped from

central territory to the South. It also is complained that the general construction of the tariffs is unfair, as the rates charged for the transportation of commodities classified under the numbered classes bear a much higher percentage relation to the rates from New York than do the rates on commodities enumerated under the letter classes, food products, and similar heavy traffic.

It is alleged that this improper relation between the rates has the effect of restraining and impeding the growth of productive industries in central territory, to the profit of similar industries in Eastern territory.

In other words, it is claimed and so shown by copies of the proceedings of the Southern Freight Association and of the Southeastern Mississippi Valley Association, which have been obtained, that the railroad and steamship lines comprised in these associations deliberately have set out to keep the manufacturers of the central territory from competing with the manufacturers of the East in the Southern trade.

Excuse of the Railroads

The excuse made by the railroads is that, inasmuch as the West is the food producing country, the roads leading to the South from central territory always will have a heavy traffic in food products, but if they also have their share of the merchandise traffic into this territory, it will take too much away from the traffic of the lines leading from the Eastern seaboard territory. They have formed this combination deliberately to maintain their own balance of traffic, and have taken upon themselves the power to make or unmake the industries of certain localities.

"If the subscription price of FREIGHT was \$25 a year, I should consider it most reasonable. It is worth much more than that to me."
—A Subscriber.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Damage of a "Concealed Nature"

To the Editor of Freight:

SIR—We have a claim against the Clyde Steamship Company for damage done to two crates of slate shipped to Jacksonville, Fla. They offer to settle the claim on a basis of 50 per cent., stating as their reason therefor that claims of damage of a *concealed nature* are generally settled on this basis, as we should share the responsibility. We cannot find any law on the subject, and would thank you to enlighten us as to whether their position is justified, and what our rights in claims of this kind are.

Thanking you in advance for your courtesy in the matter, we beg to be considered

Yours truly,

THE BRUNSWICK-BALKE-COLLENDER COMPANY,
TAROF,

Traffic Manager.

NEW YORK, May 16, 1906.

What is meant by damage of a "concealed nature"? Is it that there is a damage which cannot be seen and might be called a latent defect? Perhaps the claim of the carrier is that the slate was so constituted that it was not perfect when shipped and that the damage is due in part to the latest defect, which existed at the time of shipment.

The term "damage of a concealed nature" is not known to transportation or maritime law, and seems to be an invention.

To the Editor of Freight:

SIR—We beg to acknowledge receipt of your favor of the 25th inst., and thank you for advices contained therein regarding the term "damage of a concealed nature." We have had this put to us on several occasions by railroads in connection with the claims we have had against them for damage done to our billiard slate. These slates are packed in crates, and it just happened that the slate cracked right under a board, which is nailed over its face in the centre of it in order to protect it. All the rest of the slate is entirely clear of obstructions and free to inspection. In other words, even if cracked directly under that cross board, the damage would be readily seen if properly inspected. We maintain that by reason of the peculiar packing, they have no grounds at all for their contention, and insist upon their settling the claims. Our desire to know whether there was any law which relieved the railroad and steamship companies of any damage done because you cannot see it because it happens to be right under some board put there to protect it is what prompted our writing you on the subject. We have refused to accept settlement of the claim on a basis of 50 per cent., using your contention as an argument, and will await the result.

Yours truly,

THE BRUNSWICK-BALKE-COLLENDER COMPANY,
TAROF.

NEW YORK, May 26, 1906.

Concerning Switching Charges

To the Editor of Freight:

SIR—The writer was informed today that there was an article published in one of the Chicago papers

last week regarding a decision by the United States Supreme Court that industrial railroads collecting switching charges on their own products were violating the Interstate Commerce Law.

If you have any knowledge of any such decision would you kindly give the writer definite information, so that he can secure a copy of the decision?

Thanking you in advance for your courtesy in the matter, I beg to remain,

Yours very truly,
G. M. SHERMAN.

SOUTH BEND, Ind., July 11, 1906.

The inquirer probably refers to the criminal proceedings against J. N. Faithorn and F. A. Wann, the Chicago & Alton Railroad and the Schwartzschild & Sulzberger Beef Company, in the Western Division of the Western District of Missouri. It was alleged in the indictment, in which there were several counts, that the carrier had paid to the beef company, by way of rebate, \$1 per car, and that there had also been made certain allowances for passenger fares. It was charged that the payments of both the \$1 per car and allowances for passenger fares were in violation of the Elkins Law. The defense was that the payment of \$1 per car was for the use of private tracks and sidings of the beef company, and that the matter of passenger fares was in order to make the beef company good in some matters concerning which the carrier was liable. The matter of passenger fares was dismissed by the judge, stating that the Elkins Law did not apply to the movement of passengers, but for the transportation of property only. Under the instructions of the presiding judge the parties were found guilty and fines amounting to \$60,000 was imposed. An appeal was taken.

In disposing of the case, Landis, J., said: "The indictment charges that the payment of this money to the packing company is a rebate. The defendants contend that it is a legitimate payment to Schwartzschild & Sulzberger for the use of that company's private tracks connecting the shipping docks of the packing company with the Belt line.

"The Interstate Commerce law requires the carrier to publish schedules of its rates and charges for the transportation of passengers and property. The law also provides that the schedules shall state, separately, the terminal charges and any rules or regulations which in any wise change, affect, or determine the aggregate of such rates and charges. The Elkins law forbids the carrier to offer or give any rebate, concession or discrimination in respect to the transportation of any property in interstate commerce whereby such property shall by any device whatever be transported at a less rate than that named in the published tariff.

"It is argued in behalf of the defendants that, if any section of the law is violated, it is that provision

which requires the carriers' schedules to state the terminal charges and rules which change the aggregate. I am unable to see the force of this contention. Plainly, the return by the defendant carrier to the packing company of a part of the money paid by the shipper to the carrier for the transportation of the shippers' product is not a charge or rule or regulation within the meaning of the law requiring such last mentioned items to be exhibited in the carrier's published schedules. The question is whether or not the payment so made is a device whereby the packing company's property is carried at less than the Alton's published rate, which, as seen above, includes the service on the Belt company's tracks. It would seem that to state the question is to answer it."

Routing of Shipments

To the Editor of Freight:

SIR—How can we obtain the right to route our lumber from the South via such fast freight lines as we believe will handle it to the best advantage?

We have recently shipped from a point on the N. O. & N. E. a carload of the highest class yellow pine flooring, consigned to an interior New England point. The lumber came via rail and water and was reshipped from Boston, arriving at destination in a very badly damaged condition, on account of excessive handling. We understand that we, of course, have a claim for damages, but these claims are very unsatisfactory to handle. We have been unable to secure a routing from N. O. & N. E. and Illinois Central points, and would ask if there is any way that shippers may obtain a right to route these shipments when in carload lots.

Very truly yours,

JONES HARDWOOD COMPANY, INC.,
GARDNER I. JONES, Treas.

JULY 12, 1906.

As there are practically no "fast freight lines" operating in Southern territory, it is impossible to advise inquirers how to secure routing by those transportation agencies. It is assumed that if the goods can be routed "all rail" and without change of cars the necessities of the inquirers will be met.

The tariffs of the carriers mentioned reserve the right to the carrier to route freight where through bills of lading are issued. Various routings are permissible to New England territory, but as the tariffs do not show routing farther than the Ohio River, it is necessary to secure information of more detail.

No Rule to Determine Delays

To the Editor of Freight:

SIR—Supposing a car is delayed in transit an unreasonable length of time on account of the washouts or other similar accidents, is the consignee obliged to receive the car in case he has no use for same, on account of being obliged to purchase the material elsewhere?

Also, supposing the delay is caused by the want of cars or locomotives, would the consignee be obliged to take the car; that is, in case he refused the car on its arrival, or notified the railroad company before the

car arrived, could he collect of the railroad company for the full amount of the value of the carload?

Yours truly,

WILBUR LUMBER COMPANY.

MILWAUKEE, Wis., June 26, 1906.

The general doctrine relating to delay in transporting goods is that the carrier shall transport and deliver them within a reasonable time. This ordinarily means that the carrier shall have such facilities by way of motive power as is sufficient for the ordinary purposes and demand; if there be an extraordinary quantity of goods offered for shipment, a delay will not warrant a suit for damages. There is no rule which can be laid down to definitely state what will constitute unreasonable delay. Each case must stand upon its own basis and is controlled by all facts and circumstances in connection therewith. There may be causes which would make it advisable for a carrier to delay the transportation.

In the event of a delay by reason of a washout or similar causes, it is the duty of the carrier to exercise all due diligence in forwarding the goods thus delayed; the same duty is incumbent upon the carrier irrespective of the cause of the delay. If the delay be due to the negligence of the carrier, he is responsible in damages for the detention of the goods; if the delay be not due directly to the negligence of the carrier, he is not responsible.

A consignee would only be justified in refusing goods if the delay had been so unreasonable and due to such negligence on the part of the carrier as that the action of the carrier could be construed to be a conversion of the property. Under such circumstances the owner of the goods could recover the value of the same and in some jurisdictions the damages arising from the fact that the goods were withheld by the carrier. If the goods be accepted with notice of the unreasonable delay, the owner does not waive his right to recover for damages which have resulted to him from the detention by the carrier.

Bill of Lading Drafts

To the Editor of Freight:

SIR—According to the rules of the railroad companies, all goods covered by order bills of lading are not to be delivered until the bill of lading, properly indorsed, is surrendered to the railroad agent, but in very many cases the railroad agents, on their own responsibility, deliver the goods without the surrender of the bill of lading, thus giving their customer the use of the goods before paying drafts to which the bill of lading is attached. We have had instances where our drafts have been held up for thirty days and more, which means loss to us in interest.

Is it not possible for this matter to be laid before the Interstate Commerce Commission, and if possible to have it made a misdemeanor for any agent to make delivery of goods billed to order without the bill of lading being in his possession at the time?

J. W. HARKER.

HARRISBURG, Pa., July 18.

The obtaining of goods which have been billed to order under Section 9 of the conditions of the so-called

uniform bill of lading has been the subject of considerable comment. It is to be seriously regretted that the notify party should attempt to secure possession of property without surrender of the bill of lading. Such action is not warranted by good business principles or morals, and may, perhaps, be a violation of law. It produces untold trouble and frequent loss of money to the carrier, as well as loss of interest and trouble for the shipper.

The Interstate Commerce Commission has no criminal jurisdiction, and consequently could not undertake to have such an action made a misdemeanor. Some of the States have such a statute, but they are honored more in the breach than in the enforcement.

It is not impossible that one who knows that goods are consigned to order and who is aware of the conditions of a bill of lading—namely, that in order to obtain possession of the goods he must surrender the original bill of lading—might be convicted of larceny. Larceny is defined as the wrongful or fraudulent taking and carrying away by any person of the personal goods of another from any place without any color of right, with a felonious intent of converting them to the taker's use and make them as his own property without the consent and against the will of the owner. Some courts have omitted the element of intent "to convert goods taken." There are many ways in which larceny may be accomplished. One of them is by means of some fraud or trick. It would appear that with the knowledge with which we have assumed the notify party or consignee to have, he practices a fraud upon the carrier as well as the owner of the goods, and perhaps the bank with whom the bill of lading is pledged as collateral.

A case of this nature has not been decided in the United States courts. There are many cases, however, bearing strongly upon the subject. In England it has been determined that where one obtains property from the owner's servant, to be delivered upon the payment of money, and counterfeit money be given, the party obtaining possession is guilty of larceny. The same rule is laid down with respect to any other means through which the possession of property is obtained by means of a fraud. It would appear that the carrier would sufficiently represent the owner of the goods (whether such that he be the general or special owner) and could start the criminal law if it saw fit.

It is said express companies have no difficulty in securing payment for C. O. D. freight. As the two matters are much alike, it is the duty of honest receivers, shippers and carriers to put a stop to the increasing and pernicious practice of securing goods shipped under an order bill of lading without the surrender of that document.

Liability for Loss by Fire

To the Editor of Freight:

SIR—Can you give us information on the following subject: In a certain town in New York State the

New York Central and the Erie Railroad both have freight stations very close together. A fire breaks out in the New York Central and destroys both stations. Is the Erie Company responsible for any freight destroyed by fire in their freight house?

Yours very truly,
JAS. H. PRINCE PAINT COMPANY,
C. H. SEWARD, Treas.

BOSTON, Mass., July 16, 1906.

A railroad company in whose freight station goods are destroyed by fire may be liable as a common carrier or as a warehouseman, or not liable at all, according to the circumstances of the case. It is liable in any event for the want of a proper amount of care concerning the property, and the degree of care is to be determined, whether or not the carrier acts in a capacity of a carrier, a warehouseman or a gratuitous bailee.

Responsibility for Overcharge

To the Editor of Freight:

SIR—I am inclosing you herewith my entire file, covering overcharge on two carloads of lumber from Stamps, Ark., to York, Pa., and direct your attention to a letter from the auditor of the L. & A. R. R., dated July 11, in which he advises that no overcharge exists with his company, and that we should file claim with the delivering line. Please advise if position assumed by him is correct. We contend that his company issued the bill of lading and that he is both legally and morally responsible for the overcharge, and that he is also the proper party to look to for settlement. The question of the rate claimed is unchallenged; in fact, it has been confirmed by their traffic department. In our opinion, as the validity of the claim has been established, it is up to the line issuing the bill of lading to effect a settlement.

We would be pleased to have your opinion on the matter. Kindly return papers after they have served your purpose.

Yours truly,
J. GIBSON McILVAIN & Co.,
Per T. A. DALTON,
PHILADELPHIA, July 18, 1906. Traffic Manager.

INQUIRY J. GIBSON McILVAIN & CO.

This matter involves an overcharge in rate on an interstate shipment of lumber, and claim has been presented to the initial carrier. The defense of the initial carrier, which is located beyond Official Classification Territory, is that it has only received its proper proportion of the published legal rate. The carriers of Official Classification Territory are accustomed, when they handle a shipment, to forward claims to connection if they themselves are not responsible. It is thought that any carrier transporting a shipment would so care for the interests of its patrons as to forward claim to proper carrier, stating its own non-liability, and not refer it back to the party filing claim.

There is no rule concerning the carrier to whom a claim for overcharge of this nature should be made. If the claim be for loss and damage, and the party entitled to present the claim knows which road is liable therefor, claim should be presented to that carrier, whether initial, connecting or final. This is not such a case. Some error in making an overcharge by increase

of rate has been made by some of the parties who handled the shipment.

If suit should be brought in such a case, perhaps the rule laid down for parties to action will serve as a good guide for claims. Suit might be brought upon the contract, either express or implied, or it might be brought for a tort. If brought for a tort, all parties handling the shipment might be made parties defendant, and one would not be nonsuited because he happened to make as defendant a party who was not liable. If the action be brought upon the contract, technically in assumpsit, for money had and received, it would only be necessary to bring suit against the delivering carrier. Either it has received the overcharge for itself or as agent for some line to whom a part of the charges are due or have been paid. We believe it is customary to make all claims, where the party filing the claim does not know which of the connecting carriers is responsible, against the final carrier. If the contract be such that the consignor ought or does file the claim for his own benefit or for the benefit of consignee, he usually files his papers with the initial carrier. If, however, one files a claim with a carrier who disclaims liability, it is the custom for that carrier to forward to proper carrier for his information and action.

In this connection it is well to call attention to the provision of the Elkins Law by which the published rate is to be conclusively deemed to be the legal rate and any departure therefrom is punishable by fine.

Liability for Loss by Delay

To the Editor of Freight:

SIR—We would request your opinion on the following case:

Some time ago we made a shipment over one of the railroads operating out of New York to a local point in Connecticut, the ordinary delivery time of which should have been about three days, at the latest.

These goods were lost in transit and did not reach the point of destination until at least three weeks after, at which time the consignees claiming that they had lost a sale thereby, refused to accept the goods.

We desire to ascertain if we have any redress in the matter as to loss of the sale, for while the market price of varnish does not fluctuate, nor do the goods of themselves depreciate, at the same time we are put to the necessity of taking them back and placing them in stock until they can be sold again, or if they are of a special mixture, they have to be drawn down into their component parts.

Kindly advise us as above and oblige,

Yours truly,

STANDARD VARNISH WORKS.

R. A. VAN KIRK.

NEW YORK, N. Y., July 19, 1906.

INQUIRY STANDARD VARNISH WORKS.

Where goods are delayed, the damages which can be recovered are those which are presumed to result necessarily from the wrongful delay. Upon proper allegations in the pleadings, damages may be recovered for those things which are not the natural consequences of the delay or not of a character to be reasonably anticipated at the time the contract of shipment

was made; this is particularly true if a carrier be advised of the purposes for which the shipment is to be used. Consignees have received damages for the deterioration of cattle, when, at the time of shipment of feed, the carrier has been advised of the shipper's necessities; so also one shipping pieces of machinery, if the carrier be advised of its uses and the necessities for its transportation within a reasonable time, the carrier may be held liable for the rent of the machinery. As a general rule, in order to hold a carrier responsible for damages incident to delay, it must be advised by the character of the goods or by a notice to the effect of the additional liability which it will incur if it shall fail to make prompt delivery.

Shipments are governed by the conditions of the bill of lading. A portion of condition 3 of the uniform bill of lading, so-called, provides for liability in the event of loss or damage. If the shipper take back the goods, it cannot be seen how he could make a claim for profits. If, however, he permit the carrier to keep them, claiming that there has been a conversion of them (and he will be justified if they be held out sufficiently long), he can recover the value of goods at destination less the freight; it is assumed that this amount will include the seller's profit.

Shipment to "No Agent" Stations

To the Editor of Freight:

SIR—Will you kindly give us the benefit of your information on the following case:

A shipment consisting of glass was made to a station at which the railroad company had no agent. Freight charges were therefore prepaid. When consignee called, he found a portion of the shipment damaged, and entered claim against the transportation company, which they refused to pay, claiming that the same was unloaded, as far as the reports of the conductor of the freight train showed, in good order, and that they had no further responsibility in the matter.

We should like to know if there are any decisions in Pennsylvania upholding the contention of the railroad people that at no prepaid point are they responsible for damage done to shipments, if their records show goods unloaded in proper condition. Of course, we have no means of going back on the statement of their men, although there is a possibility that damage might have occurred without having been investigated in the hurry and bustle to unload the train.

Any information you can give on the above will be appreciated by

Yours truly,

JOHN LUCAS & Co.

PHILADELPHIA, Pa., July 20, 1906.

INQUIRY JOHN LUCAS & CO.

It was stated in an early Pennsylvania case that "If a carrier unload goods at a private platform, without notice, his liability continues." It is likely, however, that the contract for carriage in that case did not contain the conditions which the present bill of lading has. Condition 5, in part, reads: "Property destined to or taken from a station at which there is no regularly appointed agent shall be entirely at risk of owner when unloaded from cars or until loaded in cars." Under such a condition, if it be held reasonable by the courts, the carrier would not be liable for loss or damage to the property after being unloaded.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Kansas City Flood Cases Decided

Two interesting cases were recently decided by the Kansas City Court of Appeals. In one, *Pinkerton v. Mo. Pac. Railway Co.* (93 S. W. 849), the shipper recovered judgment for the value of a shipment of household goods. In the other, *Elam v. St. L. & S. F. R. Co.* (93 S. W. 851), the shipper failed to recover for the value of a shipment made about the same time. Both shipments were caught in the Kansas City flood of May, 1903. The first case was a shipment south bound through Kansas City; the second case was a shipment north bound through the same junction point. The defense of the carrier in both cases was practically the same, namely, that the loss and damage was the result of the unprecedented flood, which it denominated as an act of God.

In the *Pinkerton* case the court affirmed the doctrine laid down by the Missouri Court of Appeals in the case of *Moffatt v. Railway*, 113 Mo. App. 544. In that case the court said:

"The act of God must be the sole cause of the loss or injury, and whenever the negligence of the carrier mingles with the act of God as a co-operative cause, he is liable, provided the resulting loss is within the probable consequences of the negligent act; otherwise it will be too remote and disconnected to be considered the proximate cause."

The carrier also made the defense that, but for the strike of its employes, it could have removed the property to a place of safety. Upon considering the evidence introduced to support this defense the court said:

"There was evidence from which a legitimate inference may be drawn, that, but for many of defendant's experienced employes going on a strike and quitting its service a few days before, it could have taken the car out to a place of safety. But a strike, while possibly a misfortune, is no excuse."

It appeared in evidence in this case that the goods were to be transferred from one car into another at Kansas City. That at about the time of the flood the goods were moved to a low portion of the transfer yard, and that, notwithstanding the fact that the carrier's agent had notice of the probable high water, the goods were not moved.

In the *Elam* case no evidence was given except to show that the property was intrusted to the initial carrier; that when it was given to the railway it was in good condition and was delivered in a damaged condition. The defendant gave evidence concerning the unusual flood. The plaintiff did not introduce evidence tending to show that the carrier knew of the possible unusual flood in time to remove the property to a place of safety. It was shown that the water at

a given time had reached an abnormal height, but the court held that this of itself was no indication that it would continue to rise, and that the knowledge of such fact would not make the carrier guilty of negligence. "To hold defendant guilty of negligence, the presumption must be indulged, without any fact in proof to sustain it, that the height of the water in the afternoon of Saturday alone indicated that it might continue to rise until it became so high that it would reach freight in defendant's house and cars. It must be apparent that, in the absence of any proof showing either the origin and nature of the flood and the conditions prevailing in the areas from whence it came, or of the existence of knowledge in defendant of its real character, or of information relative thereto available to the defendant, the conclusion that defendant failed to exercise reasonable care necessarily must rest upon conjecture and not upon facts in evidence."

It will be observed that the dividing line between the two cases is that there was a want of evidence in the *Elam* case to show the carrier negligent in its failure to remove the property to a place of safety. On the subject of the exercise of reasonable care, the court, in the *Elam* case, said:

"In the exercise of reasonable care, of which negligence is the antonym, human foresight and prudence cannot foresee and guard against the sudden, unheralded and overwhelmingly powerful outbursts of natural forces, and because neither time, place nor destructive power of such visitations may be anticipated, people cannot be expected to act with reference to them, and therefore, negligence which, by chance, places persons or property within their destructive reach should not be deemed a co-operative cause of injury. * * * But when an extraordinary natural disturbance gives warning of the time and path of its approach, and of its general magnitude and power, they (such as common carriers) whose business places them in charge of the safety of persons and of the property of others, are charged with the duty of exercising care, commensurate with the exigencies of the situation, to protect those whom they serve against injury from the approaching danger. A breach of such duty is negligence, and, if injury results, must be regarded as a proximate and not a remote cause of the injury."

Demurrage Suit Settled

The United States Supreme Court has rendered its decision in the cross appeal of the *Corporation Commission of North Carolina v. Sou. Ry.* The facts of the case were substantially these: A coal and ice company had its plant some distance from the main track of the road. That this plant had a spur connection, by

means of which the railroad had been in the habit of delivering cars to this company. A dispute arose between the company and the carrier concerning demurrage upon several cars consigned to the merchant. By reason of the refusal of the merchant to pay these demurrage charges, the Sou. Ry. Co. refused to deliver goods on its siding, and said that it would only make delivery of goods on the public team track. Subsequent to the notification, four cars of coal were ordered from other States by the merchant. These were placed upon the team track, and the consignee refused to unload them elsewhere than on his private siding.

The matter was brought to the attention of the North Carolina Corporation Commission, who made an order requiring the railway company, upon payment of freight charges, to make the delivery of the cars on the siding of the consignee, which is beyond the right-of-way of the carrier. Upon appeal through the Circuit Court of North Carolina to the Supreme Court of the United States, the last mentioned court held two jurisdictional questions, and further, that the order and decision of the Corporation Commission of North Carolina and the statute of that State upon which the same was based were void, because in conflict with the commerce clause of the United States Constitution and the Act to Regulate Commerce.

The Court, in disposing of the case, said:

"Without at all questioning the right of the State of North Carolina, in the exercise of its police authority, to confer upon an administrative agency the power to make any reasonable regulation concerning the place, manner and time of delivery of merchandise moving in the channels of interstate commerce, it is certain that any regulation of such subject made by the State, or under its authority, which directly burdens interstate commerce, is a regulation of such commerce, and repugnant to the Constitution of the United States. (*Houston and T. C. R. Co. v. Mayes*, 201 U. S. 321, ante 491; *American Steel and Wire Co. v. Speed*, 192 U. S. 500.)

"Not being called upon to do so, we do not pass upon all the general regulations formulated by the commission on the subject stated, but are clearly of opinion that the court below rightly held that the particular application of those regulations with which we are here concerned was a direct burden upon interstate commerce and void. Viewing the order which is under consideration in this case as an assertion by the Corporation Commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce. On the other hand, treating the order as but the assertion of the power of the Corporation Commission to so direct in a particular case, in favor of a given person or corporation, the order not only was, in its very nature, a direct burden and regulation of interstate commerce, but also asserted

a power concerning a subject directly covered by the act of Congress to regulate commerce and the amendments to that act, which forbid and provide remedies to prevent unjust discriminations and the subjecting to undue disadvantages by carriers engaged in interstate commerce.

"The direct burden and resulting regulation of interstate commerce operated by an alleged assertion of State authority similar in character to the one here involved was passed upon by the Circuit Court of Appeals for the Sixth Circuit in *Central Stock Yards Co. v. Louisville & N. R. Co.*, 63 L. R. A. 213, 55 C. C. A. 63, 118 Fed. 113. The court in that case was called upon to determine whether certain laws of Kentucky imposed a direct burden upon interstate commerce, and were a regulation of such commerce, upon the assumption that those laws compelled a common carrier engaged in interstate commerce transportation to deliver cars of live stock, moving in the channels of interstate commerce, at a particular place beyond its own line, different from the general place of delivery established by the railway company. In pointing out that, if the legislation in question was entitled to the construction claimed for it, it would amount to a State regulation of interstate commerce, it was aptly and tersely said (p. 219, 63 L. R. A.; p. 70, 55 C. C. A., and p. 120, 118 Fed.):

"It is thoroughly well settled that a State may not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the States. In the case at bar we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky Constitution could be given any such construction, it would follow it could regulate interstate commerce. This it cannot do."

"As we conclude that the court below rightly decreed that the order complained of was invalid because amounting to an unlawful interference with interstate commerce, we deem it unnecessary to consider the contentions made on the cross appeal of the railway company. And because we confine our decision to the issue which necessarily arises, we do not intimate any opinion upon the question pressed at bar as to whether an order which was solely applicable to purely State business, directing a carrier to deliver property upon a private track beyond the line of the railway company, would be repugnant to the due process clause of the Constitution. (*McNeill et al. v. Sou. Ry.*, U. S. S. C., Oct. term, 1905.)"

Charges Must Be General in Terms

The State of Florida secured an alternative writ of mandamus against the Atlantic Coast Line Railroad seeking a compliance with an order of the Rail-

road Commission. The order required the Atlantic Coast Line Railroad Company "to haul and distribute between its stations all along its line of railway in the State of Florida, for the Postal Telegraph Cable Company, its men, holes, wire, and other material for the maintenance, operation, repair, construction, and reconstruction of all its lines of wire." And further ordered that "for such service performed and rendered for the Postal Telegraph Cable Company the railroad may charge the current tariff rates from the point of shipment to the first regular station next beyond the last intermediate place where such material is to be unloaded, the consignor shall furnish all labor necessary to effect such distribution, and shall pay full first class passenger fares for all men whom they send with said cars to effect such distribution. For the extra service and hazard of stopping cars and engines between stations, as above indicated, the railroad company may charge and collect \$10 per car in addition to the current lawful rate."

In sustaining a demurrer to the writ the court said:

"The power and duty to make and promulgate reasonable and just rates or charges for transportation of passengers and for the handling, transportation, and delivery of freights conferred upon the Railroad Commissioners by chapter 4700, p. 76 of the Acts of 1899, relate to rates to be made upon the subjects of transportation, and not to rates to be made for particular persons or corporations. Such rates or charges should be made general in their nature, and applicable alike to all persons and corporations under like circumstances, and should not in terms or in effect be made applicable to only one person or corporation to the exclusion of other persons or corporations under like circumstances. Rates or charges made general in their terms may be applicable to only one person or corporation, because no other person or corporation is in like circumstances, and this would not make the rates or charges special; but even in such cases the rates or charges should be made general in their terms and should not in terms be made applicable to a particular or designated person or corporation. The Railroad Commission Law, Laws 1899, p. 76, c. 4700, is designed to prevent unjust discriminations, and to this end it provides for the making and enforcing of rates or charges upon subjects of transportation applicable alike to all persons or corporations in like circumstances, and for preventing the giving of different rates to different persons under like circumstances."

IMPORTANT DECISIONS IN BRIEF

Where a marine bill of lading provided that the goods were to be taken from the ship by and at the cost of the consignee, and the ship's liability should cease package by package, as the goods left the ship's deck or tackle, and if not removed the goods would be landed at the risk of the consignee, but the bill of lading contained no provision that the consignee should receive notice of the arrival of the goods, it was held to be the duty of the carrier to give notice of the time of arrival and allow a reasonable time for the removal of the goods. In the

absence of such notice and reasonable allowance of time to the consignee for removing same, if they were unloaded and the goods were damaged, the carrier was held liable. (*Rosenstein v. Vogemann*, 77 N. E. 625.)

Where a carrier had but one rate applying between point of shipment and destination, but the bill of lading limited its liability in consideration of a "reduced rate," it was held that the contract of shipment in so far as it attempted to limit the carrier's liability was without consideration and the carrier was bound to perform all the common law duties and obligations belonging to a common carrier. (*Ficklin v. Wabash R. Co.*, 92 S. W. 347.)

Where a shipper of live stock loaded into a car more sheep than the car could reasonably hold, and by reason of the overcrowding five of the animals were killed from suffocation before the transportation had commenced, it was held that the death of the sheep was due to the negligence of the shipper. (*Ficklin v. Wabash R. Co.*, 92 S. W. 347.)

A curious case was recently before the Court of Civil Appeals of Texas. It appears that the Belton Oil Company were defendants in a suit for a sum alleged to be due to the carrier for a balance of freight charges on certain shipments of cotton seed meal and similar products. It appeared that the carrier entered into a contract with the shipper by the terms of which it was to accept and ship freight for him according to his scale of weights, with a proviso that the carrier would be permitted from time to time to inspect the books and records of the shipper for the purpose of verifying the weights as stated by the shipper, and should the inspection show incorrect returns, proper charges were to be made. It was held by the court that the carrier was not precluded from going behind the bills of lading and freight bills which it had signed to see that the weights furnished by the shipper were incorrect, and so even though the carrier's agent who received the shipments knew of the existence of the shortage at the time the shipments were made and freights paid. (*Belton Oil Co. v. Gulf C. & S. F. Ry. Co.*, 92 S. W. 411.)

A "Transportation Company" agreed with a prospective consignee to attend to its shipments from a foreign country to a port of entry located in the interior. Through error the goods were not shipped through in bond to destination, but were detained at the seacoast. As a result of the detention, the goods became unsalable. The consignee sued the "Transportation Company" to recover for the damage to the goods. The defense was that the "Transportation Company" was not a common carrier under its business, as it did not own the means of transportation, and sought to assume only the liability of a forwarder. This contention was denied by the court, who held that to constitute a common carrier it was sufficient that one make a contract by which, as carrier, he agrees to transport and deliver goods. Having held that the "Transportation Company" was a common carrier, the court further held that it was an insurer except for loss or damage caused by the inherent quality or defect in the goods, by the act of God or by the act of the owner or of the public enemy. (*Cownie Glove Co. v. Merchants Dispatch Transportation Co.*, 106 N. W. 749.)

The Supreme Judicial Court of Massachusetts has decided that a common carrier may limit its liability in case of loss to the value placed upon the shipment. But such a stipulation in a receipt for the goods is not binding upon the shipper unless brought to his knowledge in such manner that his consent can be fairly presumed. The acceptance of a receipt and action upon it by the shipper without dissent raises the presumption that the shipper consented to the limitation of liability. (*John Hood Co. v. Amer. Pneumatic Ser. Co.*, 77 N. E. 638.)

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

It is announced that the Seaboard Air Line intends to spend about \$2,500,000 in the Birmingham district within two years. The road will build to Anniston and probably to Gadsden.

The Birmingham Southern Railway has been absorbed by the Tennessee Republic Company.

Attorney General Massey Wilson in a recent letter declares that the law conferring power on the Railroad Commission to fix rates passed by the last Legislature of the State of Alabama is legal and valid. The letter followed an attack on the law made by B. B. Comer, president of the Commission.

The Selma Freight Bureau has actively begun work and is in charge of J. T. Slatter, formerly of Birmingham.

A Commercial Club has been organized in Eutaw for the purpose of protesting against discrimination in freight rates. Eutaw complains, not that her rates are too high, but because they are higher than those of the towns which surround her.

The freight facilities of the L. & N. at Mobile are to be doubled.

The pig iron manufacturers in the Birmingham district and throughout the South are asking the railroads to reduce the freight rates on their products to the Ohio River gateways again.

ARKANSAS

At a recent meeting of the North Arkansas Apple Shippers' Union, at Rogers, a petition was prepared to the Frisco and Kansas City Southern roads asking for a lower rate on apple shipments to Texas points.

The Merchants' Freight Bureau, of Little Rock, aided by the Board of Trade and Business Men's League, is attempting to secure more equitable rates to the capital city of Arkansas. It is contended that Little Rock should be recognized as a river competitive point and rates adjusted accordingly.

CALIFORNIA

Immediately after the passage of the new rate law President Harriman, of the Southern Pacific, sent orders to San Francisco to cancel the annual interstate passes sent out at the beginning of the year.

The Southern Pacific has decided upon a new freight line between San Francisco and Oakland for the handling of trans-continental freight for the Orient, as well as general lines. The line will be about 67 miles long.

There is still a congestion of lumber on the wharves of San Francisco. A large number of vessels were tied up for a time by a strike on the water front.

COLORADO

The Colorado Fuel & Iron Company and the Atchison, Topeka & Santa Fé Railway Company have paid the \$15,000 fines imposed by Judge Mills, of the Federal Court, in the rebating case.

The Burlington in the readjustment of rates will give Denver a lower basis than any other jobbing centre.

The new rates it is calculated will allow Denver manufacturers to secure a good percentage of the business of the Big Horn Basin Company.

Business men of Pueblo have been discussing with representatives of various railroads the proposition of securing cheaper freight rates. In particular a 25-cent reduction on the coal tariff

from the Southern coal camps was requested.

The efforts of the Colorado Manufacturers' Association to secure a lower rate on iron products from Denver to El Paso has been successful. The rate is now 25 cents per hundred pounds, where formerly it was 50 cents.

DELAWARE

At Wrightsville Beach, in August, the annual meeting of the stockholders of the East Carolina Truck and Fruit Growers' Association will be held. It is expected that the question of transportation service will be vigorously discussed.

United States Engineer C. A. F. Flagler has completed his report, which includes all the important Delaware streams, and it has been forwarded to Washington. There is an actual balance of \$20,500, and Mr. Flagler is of the opinion that \$139,000 additional could be advantageously expended. The condition of the channel on June 30, 1906, was approximately as follows: The channel from the 18-foot curve in the Delaware River has been dredged during the year, under contract with the Bowers Hydraulic Dredging Company to a depth of 18 feet at mean low water, with full width of 250 feet to a point about 3,500 feet above the mouth of the Christiana River. From this point to the Third street bridge, about 5,000 feet, the depth of channel is from 18 to 20 feet, but narrow in places. Above Third street bridge to the Harlan & Hollingsworth shipyards, about 6,000 feet, a depth of 13 feet can be carried at mean low water with a channel width of about 100 feet.

FLORIDA

On July 17 there were ten miles of lumber laden cars tied up in the yards of the various railroad companies in Jacksonville. It is estimated that no less than 35,000,000 feet of yellow pine lumber was awaiting shipment by vessel. The Railroad Commission has been taking testimony concerning the congestion, and it is expected that some plan of relief will be devised. The railroads claim that if the consignees would get vessels to Jacksonville and move the lumber promptly there would be no congestion.

A regular steamer line will be established between Fernandina and Jacksonville. It will begin operation some time during August.

The Seaboard Air Line has acquired property in Jacksonville for the establishment of shops and transfer sheds, which will furnish employment for from 500 to 1,000 skilled mechanics.

The Yellow River Railroad, which runs from Crest View, Fla., to Floralla, Ala., has been taken over by the L. & N.

GEORGIA

Mr. Perry, of Hall, in a speech on the floor of the House, at Atlanta, said: "Hoke Smith, like Julius Caesar, is marching through Georgia to a great and glorious victory. The people shall yet be free." Then the Gal at the Fountain wept.

The Columbus Board of Trade has decided to patronize the all water route, via Apalachicola until better freight rates are secured.

The following bill has been favorably reported by the Senate Committee on

Railroads, and in all probability will be passed:

"A BILL

"To be entitled An Act to provide that any common carrier receiving property for transportation between points wholly within this State shall be liable for any loss or damage to such property, whether caused by it or by any connecting carrier over whose lines such property may pass; also, to provide a penalty for the failure of any common carrier to adjust and pay within a time specified any just claim for loss or damage to property received for transportation, and for other purposes.

"Section I. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, any common carrier, railroad, or transportation company receiving property for transportation between points wholly within this State shall issue a receipt or bill of lading therefor and shall be liable to the holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability herein imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"Section II. Be it further enacted, That every claim for loss or damage to property, or overcharge for freight for which any common carrier may be liable shall be adjusted and paid by such common carrier within 60 days in cases of shipments wholly within this State, and within 90 days in cases of shipments between points without and points within this State, after such claim duly verified by the oath of the claimant, or his agent, shall have been filed with the agent of the initial carrier, or with the agent of the carrier upon whose line the loss or damage or overcharge actually occurred. In the event such claim is not adjusted and paid within the time limit the carrier shall be liable for interest thereon at the legal rate from the date of the filing of the claim until the payment thereof, and shall also be liable for a penalty of \$50 for every such failure to adjust and pay said claim, to be recovered by the party damaged in any court of competent jurisdiction, provided that unless such claimant shall in such action recover the full amount claimed no penalty shall be recovered, but the recovery shall be limited to the actual loss or damage or overcharge with interest thereon from the date of filing said claim.

"Sec. III. Be it further enacted, That all laws and parts of laws in conflict herewith be and the same are hereby repealed."

The penalty of \$50 is provided for violation of the measure.

The Southern Railroad has issued an order announcing the rearrangement of the transportation system of this road in the South, whereby the Atlanta division is changed from the Western district, under Assistant General Superintendent W. N. Foreacre, at Birmingham, to the Middle district, under Assistant General Superintendent G. R. Loyall, at Knoxville. It is further announced that General Superintendent C. S. McManus, at Washington, is to

have four assistants instead of two, the new appointees being J. N. Seale, formerly superintendent of transportation who is stationed at Charlotte in charge of the Eastern district, and G. R. Loyall at Knoxville. These changes became effective on July 1.

The Southeastern Freight Association, with headquarters in Atlanta, was fiercely attacked in the Federal court at Macon recently by Attorneys Southall, of Augusta, and Alexander Akerman, of Macon, representing the Sibley Manufacturing Company, and the Enterprise mills, of Augusta, in a charge that preferential rates in favor of the rail lines had greatly damaged them in the shipment of goods from Augusta to Eastern markets.

It is claimed that in a Savannah meeting of the association two years ago a preference was given the part rail and part water lines and the all rail lines over the all water lines doing business through steamer lines by way of the Savannah River to Augusta. These lines, it is urged, have been forced out of business through the rates fixed for the railroads.

The Central and Southern railways, the Ocean Steamship Company and the Merchants' and Miners' Transportation Company are charged with violating the Sherman Anti-Trust laws in the combine and leading attorneys for all lines are here.

In the case of the Atkinson Stove Company against the Southern and other railroads to compel them to put into effect the rates on stoves prescribed in circular No. 309 of the Railroad Commission, a bill of exceptions has been signed by Judge Pendleton in the civil division of the Superior Court of Georgia. The case will be appealed to the Supreme Court.

ILLINOIS

Officials of the railroads of the Central Freight Association and representatives of all the big breakfast food companies in the country met in Chicago recently to confer over new rates on grain products. The present rate between Chicago and New York is 17½ cents. The railroads propose an advance.

When James J. Hill was in Chicago recently he unfolded a plan to build a canal from the Great Lakes to Lake Winnipeg. The canal will follow the chain of small lakes from Lake Huron northwest through the Lake of the Woods to Lake Winnipeg and up the Winnipeg River to the city of that name. Mr. Hill says the route has been surveyed and is thoroughly practicable and would cost but little more than to build a railroad and equip it. Having this great scheme in view Mr. Hill selected Winnipeg as the starting point for his great Canadian system of roads instead of some Lake Superior point. With the canal completed his boats will run from Buffalo, Cleveland, Detroit, Chicago and Milwaukee into Winnipeg, where his new railroad to the Canadian Pacific coast will relieve them of their freight. Since Mr. Hill has never failed to carry out a single plan he has formed there is no good grounds for doubting that he will carry out this one, and it is said that he will have the hearty co-operation of the Canadian Government in the work.

Chicago flour milling interests gained an important victory when the Western roads gave notice that after August 27 they would not accept a lower rate for

transporting flour than they get for hauling wheat. The action removes a discrimination against Chicago, and by it Minneapolis and other Western millers lose a decided advantage they have held over local interests.

The action was taken by the roads voluntarily in an effort to cease all practices that have been a discrimination in favor of any locality.

The Alexander H. King Stone Company, of Galesburg, one of the largest dressed stone firms in the Middle West, has practically determined to remove to East Peoria, because of the advantageous freight rates to be secured there.

Peoria Shippers' Association complains of discrimination in freight rates in favor of Bloomington, on the hauls from Chicago.

INDIANA

Scarcity of freight cars is reported at Evansville since the opening of the melon and new wheat season.

The gambling equipment seized by the Orange County authorities in the raid on the Casinos at French Lick and West Baden Springs was loaded into freight cars and brought to Paoli and placed in the custody of the Sheriff of Orange County.

The Evansville police were informed that the crew of L. & N. freight train No. 77 had discovered three bicycles tied underneath a freight car in their train. Two of them were unfinished. The discovery was not made until the train had crossed the Henderson bridge. The members of the crew started out to look for the owners of the wheel and found two tramps. They were put off the train at Rankin, Ky. The members of the detective force think the bicycles were stolen and that they had been tied to the rods beneath the cars by the thieves.

It is understood that a bill providing for a flat 2-cent passenger rate will be introduced in the next Indiana General Assembly, and the question is being discussed in railroad circles whether a passenger bound from Indianapolis to Columbus, Ohio, or from any point in Indiana to a point in Ohio would be able to buy a ticket at the reduced fare. The law passed in Ohio making 2 cents a mile the highest passenger rate that may be charged by the railroads operating in the State is a dead letter as far as interstate business is concerned.

The leading manufacturing and shipping firms of Indianapolis have organized a freight bureau for the purpose of dealing with railroad officials in matters of rates and service. T. R. Kackley, of the Atlas Engine Works, was elected president, and H. Bates, Jr., of the American Hominy Company, vice president. C. C. Hauch, of the Nordyke & Marmon Company was made chairman of the executive committee, and J. Keary, formerly assistant general freight agent of the Big Four, will be the commissioner. The offices of the bureau will be in the Traction Terminal Building. There is no spirit of antagonism to the railroads in the movement. It is intended to be a co-operative convenience.

A new freight depot is to be built at Fort Wayne by the Pennsylvania Railroad.

IOWA

The Chicago, Milwaukee & St. Paul is building a 300-foot extension to its Sioux City freight house.

It is stated that manufacturers and business men of Iowa City intend to

take the matter of the increased rates on coal from Southern Illinois and Northern Missouri before the Interstate Commerce Commission.

It is believed that the freight terminus of the Chicago & Northwestern Railroad is to be located in Clinton, instead of Chicago. The Burlington Railroad, it is understood, will soon put Sioux City on an equality with Omaha in the matter of freight rates.

KANSAS

Vice President Edward Dickinson, of the Kansas City, Mexico & Orient, says that 619 miles of road now in operation will be increased to 1,100 miles soon after January 1. In Mexico half of the territory is now covered with a completed line, 325 of the 635 miles being now finished. It had always been understood that it was almost impossible to cross the mountains in Mexico, but the work is now half accomplished. The grade is 2½ per cent., compensated by curves, which is less than that of the Santa Fé in several cases. It is about the same as the Great Northern and the Northern Pacific.

Mr. Dickinson says: "The tonnage is in sight for this new road and it will be enormous. Its local business will be its strong feature. Sonora is to Mexico what California is to this country. The State is 350 by 80 miles, with eleven rivers crossing it, so that the whole can be irrigated. Ninety-seven varieties of hard wood are to be found and all kinds of tropical fruit. Green corn and strawberries can be had every day in the year. Sisal, similar to our hemp, returns 10 per cent. on the valuation of \$300 per acre. In Sonora may be found 4,000,000 acres of anthracite coal. The Hamburg-American Line has made a contract with us for steamers and we shall also have a direct line of steamers to the Orient."

Governor E. W. Hoch, at a banquet of the St. Joseph Credit Men's Association, at St. Joseph, made the following remarks: "Is the granting of rebates any advantage to a railroad? All rebates are that much loss to the corporation granting them. Let us see who is to blame. We have two railroads entering a town. A man shipping 500 carloads of merchandise goes to one agent, and finally is offered a rebate. He goes to the other, and is offered a greater rebate if he will give his business to that second road. There you have the root of the rebate evil. Wrong, yes, but exceedingly human."

"Now the problem of government is, how can the railroads be protected, and the shipper receive the same protection? That is a problem for statesmen, not demagogues."

KENTUCKY

Two additional freight trains have been put on the Louisville & Nashville between Lexington and Louisville, to accommodate increased traffic.

Commissioner Ferguson recently stated that the new freight rates of the Commission will go into effect August 1; that the reduction is practically 25 per cent. on the published classed rates on the L. & N.

LOUISIANA

The freight handlers' strike in New Orleans was settled early in the month. The men signed on a basis of 18 cents an hour for ten hours' work a day and 28 cents an hour for overtime and holidays. Contract is to run two years.

New Orleans coffee merchants are trying to obtain the same rate on coffee

from Rio Janeiro or Santos that New York enjoys—35 cents. The present rate to New Orleans is 40 cents.

MAINE

The new freight shed of the Maine Central at Bangor is nearly completed. It is a frame structure, 500 feet long and 30 feet wide.

MARYLAND

The new freight steamer built by the Maryland Steel Company for the Baltimore Steam Packet Company has been launched. The vessel is to ply between Baltimore and Norfolk.

The Wabash has begun operating the Cross Creek Railroad, a six-mile coal road built by the Washington County (Pa.) Coal Company, from Avella, on the Pittsburg line of the Wabash.

The Western Maryland Railroad Company has ordered twenty-five large consolidated freight engines from the Baldwin Locomotive Works. The delivery is to begin December 1.

Some of the Baltimore newspapers are calling the attention of President Cassatt, of the Pennsylvania Railroad, to the fact that although a new station was promised by him last February, no sign of the beginning of the work is apparent.

MASSACHUSETTS

The New Haven Railroad Company has opened a new freight yard in Boston, which will be known as the Massachusetts avenue freight yard. This delivery is contiguous to that of the South Bay Wharf & Terminal Company, and will be available for the receipt and delivery of freight in carloads.

The city of Fall River has decided to grant to the Old Colony Street Railway Company a franchise to carry baggage and freight.

The Boston & Albany will build a new wharf on the site of the old Cunard pier, in East Boston.

The New Haven Railroad Company has informed W. H. Wilder, president of the Florence Company, that the freight rates to Florence will hereafter be the same as rates to Northampton.

MICHIGAN

Citizens of Detroit residing near the D. U. R. are complaining because work trains are being run out to Grosse Pointe during the early hours of the morning.

The Wabash intends to spend about \$500,000 on improvements of Detroit.

At the annual convention of the Michigan Farm Products Shippers' Association, held at Jackson, the reciprocal demurrage question was debated and an effort will be made to secure some concessions from the railroads in this particular.

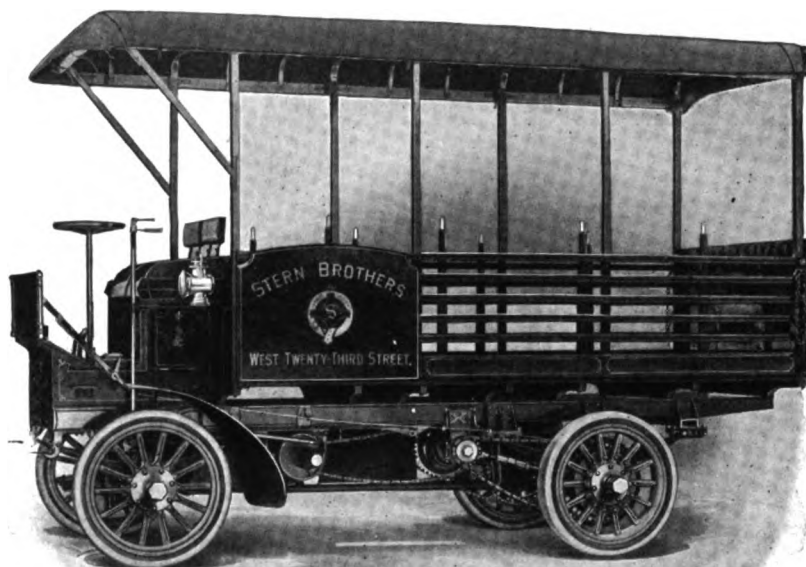
MINNESOTA

The Omaha road will build a 300-foot extension to its Duluth freight house.

It is stated that the real object in James J. Hill building the Sioux City cut-off has come to the front in the announcement of that road of a reduction of rates from Duluth to all points on the Burlington, making the rate the same from Duluth as it is from Chicago. Hill is said to have had this object in view when he built this connecting line between the Burlington, the Great Northern and the Northern Pacific, thus making a good link between his Northern and Southern lines. Hill owns a fine line of boats running between Buffalo and Duluth, but has no boats to

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SPRINGFIELD, MASS.**

MEMBERS A. L. A. M.

Chicago, so by promoting the Duluth port he will get all the haul from Buffalo and other Eastern points to this territory. From Chicago he would have to turn the freight over to some other line at Mackinac or some other port to be hauled to Chicago.

MISSOURI

The new freight house of the Missouri Pacific, at St. Joseph, is now under way. It will be 400 feet long and will be built of brick.

The suit of the Government to dissolve the Terminal Railroad Association has again been up before Special Commissioner Rombauer, in St. Louis.

The taking of testimony in the Missouri Freight Rate cases will begin in St. Louis on September 7. These cases are brought to test the State law.

The thirtieth annual report of the Missouri Railroad and Warehouse Commission shows that within the boundaries of the State there are 7,819 miles of road, but the total trackage of the thirty-six systems represented is 44,686 miles. The capitalization of these roads is \$2,532,288,707, and their gross earnings last year were \$347,317,909, and their taxes for one year amounted to \$1,765,330.

The direct drayage plan has again been the subject of conferences and discussions in St. Louis, and these are expected to continue for some time.

Appeal bonds have been filed upon behalf of the seven convicted individuals and concerns in the rebate cases at Kansas City. Bills of exception were filed for the Burlington road and George L. Thomas the New York broker and his chief clerk L. B. Taggart. The next step will be the filing of the bills of exception with the Court of Appeals, which will be done at St. Louis on August 21.

Kansas City merchants will attempt to operate a steamship line for the purpose of keeping down freight rates. Several firms have signed an agreement to give 5 per cent. of the year's inbound freight bills for that purpose.

NEBRASKA

It is stated that independent capitalists are behind the proposition to build a new railroad between Omaha and Denver.

Secretary Whitten, of the Commercial Club, of Lincoln, has just received a letter from C. E. Spens, general freight agent of the Burlington, with headquarters at Omaha, stating that his road will soon publish rates out of Lincoln to the West on lime, cement, stucco, etc., based on 3 cents less than Omaha, which will put Lincoln jobbers in a position to compete on a parity.

The proposed route of the Union Pacific from Stromsburg to Lincoln through Seward County is being enthusiastically greeted by shippers in that section. At a meeting in Seward recently resolutions were passed unanimously welcoming the Union Pacific into Seward and promising the company fair treatment.

NEW JERSEY

The Pennsylvania Railroad has been buying land near Fayette and Division streets, Perth Amboy, presumably for a freight yard and freight houses.

The Erie and Susquehanna railroads have raised the rate on ice to Passaic 10 cents per ton.

NEW YORK

Merchants of Watertown charge that they are being made victims of a discrimination in freight rates in favor of

Western manufacturers, particularly those in Rochester, Buffalo and Batavia and the western part of the State. It has put them to serious disadvantage in the Boston and Eastern markets without a corresponding advantage in the Chicago and Western markets. An expert committee is looking into the matter and hopes to reach an agreement with the New York Central before appealing to the courts.

The Buffalo, Rochester & Pittsburg will build a new freight house at Rochester.

The freight handlers' strike at Buffalo did not amount to very much.

The Third Ward Non-Partisan Taxpayers' Association of College Point has protested against the granting of a franchise to the Connecting Railroad.

Wilson, Adams & Co. have sold the block bounded by East 149th street, East 150th street, the Harlem River and Exterior street, New York city, to the Erie Land & Improvement Company. The block has a frontage on the river of 442 feet, with a slip 100 feet in width and 200 feet deep. The property, which includes some seventy-five city lots, will be used by the Erie Railroad Company as its uptown freight yards in place of those now occupied jointly with other roads nearer the East River, under a lease that has two years yet to run. Wilson, Adams & Co., who are lumber dealers, have leased the property for eighteen months, and will continue to occupy it for that time. The facilities it will afford to the Erie for handling freight will be more than double those now enjoyed on the present leased lands near Third avenue.

Rochester shoe manufacturers complain of apparent discrimination of the railroads against Rochester and in favor of points farther East in the carrying of freight to the South and West. It is stated that shipments of shoes to Dallas, Tex., have been made in fifteen days, but often they take twenty-one days, while shipments from Lynn and Boston to the same point require from five to eight days. The matter will be taken up by the Rochester Chamber of Commerce.

The new schedule of freight rates per hundred pounds from Adirondack points to New York via the railroads and Williams Line are now effective as a substitute for the old rate per thousand feet board measure.

Delay in freight shipments is being discussed by the railroad and transportation committee of the Syracuse Chamber of Commerce.

NORTH CAROLINA

The Atlantic Coast Line has announced its intention of entering Raleigh upon the completion of the Raleigh & Southport Railroad.

The embargo against shipping freight in carload lots to Asheville was called off very quickly.

OHIO

Contracts for six freight vessels of large class to cost \$2,570,000 have been closed at Cleveland, and the American Ship Building Company booked five of the orders.

The Columbus Board of Trade has resolved to patronize an all water route regardless of possible delays and inconveniences for the purpose of securing lower freight rates.

The joint shippers and railroad committee, appointed by the Ohio Shippers' Association and railroads, respectively, to adjust all differences between the as-

sociation and the railroads as to car service, held its annual meeting at Columbus and reaffirmed the agreement entered into two years ago.

The new set of rules adopted recently by the Car Service Association, were objected to vigorously by members from the Shippers' Association, but after the effect of the rules was explained by the railroad officials, they were agreed to by the shippers.

The rules provide for the cutting down of the free time for unloading from 96 hours on some commodities and 72 hours on others, to 48 hours. The rule does away with the noon placing of cars, however, so that the free time is only counted from 7 o'clock each morning.

In view of the broad character of the prohibition governing the relations between common carriers and industrial concerns, the question has been raised whether the Steel Corporation will be obliged to sell its lake fleet, now a subsidiary company under the name of the Pittsburg Steamship Company. Those who have studied the situation the most carefully make the statement that there may not be such a sweeping change on the lakes after all. There is one clause in the bill which provides that commercial concerns, and even railroads, may carry material intended for their own use. The law specifies only timber and a few such materials as are used in railroad track construction. Whether this will be stretched to include the ore on the lakes is a question yet to be solved. Strictly speaking, most of the material carried by boats owned by the various steel companies, is the ore transported for their own consumption. If the commission at Washington construes the law to mean that the steel companies have a right to own ships for the transportation of ore consumed in the company's furnaces, the change in lake fleet ownership may not be so radical.

A mysterious conference of whisky men was held recently at the Burnet House, Cincinnati. It developed that the meeting was really a specially called convention of the National Association of Mail Order Liquor Dealers, which was called to consider an advance in rates by the express companies, which advance went into effect on July 1.

The proposed advance is said to represent an increase of 30 per cent. over the present rate. Every express company in the United States is acting in unison in the abolishment of the existing rate, thus affecting every mail order house of this character in the country. While the convention was in session a compromise rate was offered by three of the express companies—Adams, Wells-Fargo and Southern—but the proposition was rejected, and the convention decided to appeal to the courts for relief.

As a result it is stated that numerous suits will be instituted against the various express companies, enjoining them from interfering with the existing rates.

OREGON

The Oregon Railroad & Navigation Company has announced a reduction of 30 cents a long ton in the local rates on wheat and flour sent to Portland for export. This reduction is to offset the discrimination of shipowners against Portland, who now make a differential of 15. 3d. against Columbia River ports. Indirectly, it is the result of a reduction in rates ordered by the Railroad Commission of Washington.

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TRAFFIC MANAGER,

Care of FREIGHT.

Oregon manufacturers complain of a car shortage.

Freight brought around Cape Horn from New York for Portland, by the American Hawaiian Steamship Company, will be shipped by rail to the Oregon metropolis from Tacoma hereafter, instead of from San Francisco.

PENNSYLVANIA

The Northern Central Connecting Railroad Company, subsidiary to the Northern Central Railway Company, has under consideration the construction of a double track freight line from Viaduct, at the west end of the Rockville bridge, to a point near Northumberland, a distance of about fifty miles. Plans for the construction work are being drafted, although the work has not been approved by the directors. The purpose of the line is to relieve the greatly congested condition of the railroad at the Enola yards and facilitate the handling of freight to and from the Great Lakes from the territory south and east of Harrisburg on the Northern Central Railway and the Pennsylvania Railroad. The line will occupy a part of the road bed of the old Pennsylvania canal. It is the purpose of the management to establish an immense freight yard south of Northumberland.

After negotiations between Gould officials and New York Central interests which have lasted several months, agreements have been entered into between the Wabash & Pittsburg and Lake Erie Railroads for the joint use of their freight terminals and trackage on the south side of the Monongahela River, at Pittsburg. The arrangement is somewhat similar to that existing between the New Haven and the New York Central to this city, and, what is regarded as of still further importance, it marks the resumption of friendly relations between the Gould and Vanderbilt railroad interests.

In attempting to get rid of the transportation of all private cars used in the conduct of freight traffic, the Pennsylvania Company has run counter of a provision of its charter which may prevent such action. The provision obligates the company to transport all cars or wheeled vehicles of whatever kind, character or description which may be offered. The charter, however, does not require the company to pay the owners of the private cars from 6 mills to 1 cent per mile, loaded or empty, for the use of the cars.

It is expected that about August 1 the Pennsylvania's low-grade freight line between Columbia and Atglen will be finished and ready for operation. The most that still remains to be done is a heavy cut of 1,000 feet in the vicinity of Quarryville.

Judgment against the Pennsylvania Railroad in the sum of \$40,000 was obtained by Charles L. Greek, an Altoona

contractor, for alleged discrimination. Greek arranged with Sims & Co., a firm of railroad contractors in Cambria County, to furnish him with curbstone. When he ordered the shipments he was told that orders had been received from the office of Chief Engineer A. C. Shand to ship no stone into Blair County except through the agency of Enos Jones, with whom, it is alleged, Shand had close business relations.

No affidavit of defense was filed in the suit, and the time limit expiring judgment was entered. Counsel for the company then filed a rule to have the judgment stricken off. Last week the case was given into the hands of arbitrators.

TENNESSEE

At an early date, probably September 1, the Nashville, Chattanooga & St. Louis Railway will move its offices from Cincinnati and establish a commercial agency in Paducah. The new city offices of that road in Paducah have been completed, and will be opened about the 1st of August, and soon after that Commercial Agent D. J. Mullaney and his forces will go there from Cincinnati.

Under the decision of the jury which tried the case of M. H. Gunther & Co. against the St. Louis, Iron Mountain & Southwestern Railroad in division 3 of the Circuit Court, all railroads are responsible for damages done consignees by reason of relays in the transmission of freight. The suit attracted considerable attention, especially among the cotton men of Memphis, as Gunther & Co. were claiming damages from the railroad company on account of a delay of practically thirty days in the shipment of 150 bales of cotton from Walnut Ridge, Ark., to Memphis. They were awarded damages amounting to something over \$1,100.

The cotton was bought in the fall of 1904 and was to be delivered by the railroad company at the sheds in Memphis. It was finally placed in the sheds after three weeks' time, during which period the market price fell considerably, causing Gunther & Co., represented by W. A. Percy, as they claimed, a loss of over \$1,000. Suit was brought and the cotton factors contended that it was the duty of the railroad company to have the cotton in their warehouses within a reasonable length of time.

The railroad company, represented by McFarland & Canada, contended that under the bill of lading on which the cotton was shipped, they were released from any damages which might accrue by reason of a delay in transmission; that the delay was not unreasonable; that it was occasioned by the congested condition of the warehouses, and that it was the fault of the Patterson Transfer Company in not delivering the cot-

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ton to the sheds after it reached the yards of the Iron Mountain Company.

The court held that if there was a delay and loss followed by reason of a decline in the market price of cotton, the railroad company was liable. Judge Pittman further ruled that the Patterson Transfer Company was the agent of the Iron Mountain road in making the delivery of the cotton to the sheds, and that if they were guilty of any negligence in making the delivery, their negligence was the negligence of the railroad company.

The court allowed the jury to decide whether the delay was due to the inability of the warehouses to receive the cotton, and the jury decided that the sheds could receive the cotton at all times during that particular season. The question at issue in the case was one of fact; whether the delay was unreasonable or not.

Freight rates on glass fruit jars and washboards have been reduced to a considerable extent between Memphis and Arkansas points, according to an announcement just made by the Memphis Freight Bureau. The bureau has also made public the fact that the Southern Railway has agreed to supply Class M rates on bridge iron, carloads, from Memphis to stations in its division in lieu of the present sixth-class rates.

W. W. Aycock, secretary of the Knoxville Manufacturers' and Producers' Association, has already begun preparations for the inauguration of a railroad freight rate department. Rate sheets have been applied for from the various railways, and classification catalogues are being collected. New file cabinets for the rate and claims departments have been installed in the association's office.

TEXAS

Telephone service has been established on all freight trains of the Galveston, Harrisburg & San Antonio between San Antonio and El Paso, and it is now possible for a train crew any place along the line to get connection with the train dispatchers along that division. The service is of the greatest value when a freight crew is caught out on a blind siding. The conductor can get connection by the telegraph wire and receive his instructions from the dispatchers. In case of a wreck he can immediately telephone for assistance or instructions. Each caboose is equipped with a telephone instrument. With an extension fishing-pole-like arrangement the conductor can make connections with the railroad telegraph wires and reach the office he desires. At the same time the telephone is in use, messages can be transmitted by telegraph and neither message will interrupt the service. Several inventors have been at work trying to instal telephones in passenger coaches, where by connection with the rails a passenger could reach telephone connection with any one with whom he wished to speak along the line. Successful experiments have been performed in this manner but have not been successful enough to be put in general use.

J. S. Hershey, general freight agent of the Santa Fé, has replied to the letter sent out by the Texas Railroad Commission to the general freight agents of all lines in Texas, protesting against the increase of freight rates on interstate shipments destined to certain West Texas territory. The letter follows:

Hon. L. J. Storey, Chairman of the Railroad Commission, Austin, Tex.:

DEAR SIR—The delay in replying to your letter of July 2, addressed to the general freight agents of all the Texas railroads regarding the increased rates to certain West Texas territory, has been occasioned by my absence from Galveston. The principle of charging on interstate tariff figures slightly higher than the common point rates to points in the western section of Texas is one which is recognized by the Railroad Commission itself, the only question as between the Railroad Commission and the railroads being as to where this line should be drawn, and as to what figures should be added to the common point basis. The line of the Santa Fé extending west of Temple was placed in common point territory on September 19, 1904 (so far as State rates were concerned by application to the Railroad Commission, and on interstate traffic by an individual act of the Santa Fé Railway), because such action was felt necessary in order that towns located upon the west end of that line might successfully compete with other towns in the same locality, and I have always been perfectly satisfied that our action in this matter was entirely proper.

Under the new rates, which became effective July 5, slight advances were made in interstate rates at points on our railroad west of Killeen, but inasmuch as the rates were similarly advanced to all the territory competing with the towns located along our line, I cannot believe that any material harm has been done, and feel that the merchants and shippers throughout the entire section affected are at no particular disadvantage as compared with the conditions which existed prior to July 5.

I apologize again for not having more promptly replied to your communication.

Yours truly,

J. S. HERSHEY.

VIRGINIA

Official announcement has been made by the Norfolk & Western Railroad of the new coal and coke freight rates for Richmond. The same rate given Norfolk a few days ago has been given the capital city, namely, \$1.50 a ton on coal from the mines for all purposes. This uniform rate, the same announced by the Chesapeake & Ohio for Richmond, Lynchburg, Newport News and Norfolk, does not give inland cities advantage over tidewater cities.

Chesapeake & Ohio intends to build an extension to its freight warehouse at Lynchburg during the year.

J. G. Tinsley, of Richmond, declined to give the \$5,000 bail required by Judge Waddill for his appearance in the Middle Tennessee District Court to answer to the charge of violation of the Sherman Anti-Trust Law, and is under arrest. His counsel at once asked for a written statement giving a recitation of the facts upon which the court's decision was found.

Assistant Attorney General Sanford objected, but Judge Waddill said that no doubt the gentlemen only wanted to perfect their procedure in order to get the matter before the United States Supreme Court, and suggested that counsel get together and decide upon what was necessary.

Application was made by Mr. Tinsley to Judge Goff for a writ of habeas corpus in order to get the case to the

Supreme Court in the most direct way. Mr. Tinsley is only technically under arrest, being under parole by United States Marshal Treat. Should the application be refused and the bond not given, then the millionaire would have to go to jail.

Mr. Tinsley's case is a test, and is being watched by Messrs. S. T. Morgan, Fortesque Whittle and J. Rice Smith, of the Virginia-Carolina Chemical Company, and F. S. Royster, Charles F. Burroughs and Frank C. Wilcox, of the Royster Guano Company, Norfolk, and Frank B. Dancey, Norfolk, manager of the Virginia-Carolina Company, the other indicted Virginians, with intense interest.

UTAH

Salt Lake City is considerably agitated over a convention of commercial organizations of Washington, Oregon, Idaho and Montana that will be held in Spokane in October. The object of the proposed convention is to bring about harmonious co-operation for the upbuilding of the entire Northwest. A Salt Lake wholesaler makes the following statement: "Salt Lake wholesalers and jobbers must get busy. If they do not get a grip on this territory, Portland, Seattle and Tacoma will corral the trade of that territory, and Salt Lake City will have to look in other directions for the development of her wholesale and jobbing business. The market between Salt Lake and Huntington, Ore., including the greater part of Montana, all of Idaho, Western Colorado, Wyoming and Nevada, is naturally tributary to this city, and local people are not awake to their opportunities for commercial development and expansion if they permit the North Pacific Coast cities to step in at this time and seize that trade. It is to make certain of this trade that the six States business men's excursion has been proposed. If Salt Lake will offer the proper inducements local business people can be put in direct touch with the buyers for the business houses of all cities and towns within an area of 500 miles in all directions to this city. It is up to Salt Lake to make herself known as a distributing centre. Other cities are doing this and are getting results that are measured by dollars. It is up to us to do the same."

WASHINGTON

One of the features of railroad rate reduction that interests Walla Walla farmers much is that on grain sacks from Tacoma. Although the railroad companies have gone through the formality of making a reduction in carload lots, the present rate is higher than the old rate, which was 57 cents a hundred in carload lots. The present rate is 59 cents in carload lots and 69 cents in less than carload lots. In regard to grain dealers furnishing sacks to farmers, they say it is only done as an accommodation, and the small percentage which they get is only sufficient to reimburse them for actual expenses in handling. They declare they would much prefer not to handle sacks at all and will be glad to see the facilities at the penitentiary so increased that the State could supply the demand wholly.

It is asserted that the removal of the Warren Manufacturing Company's plant from Spokane to Tacoma was due to the fact that the freight rate in carload lots on steel and iron was found to be about \$200 more to Spokane than to Tacoma.

HEARINGS AND RULINGS BEFORE STATE COMMISSIONS

ILLINOIS

Following a hearing by the railroad and warehouse commission and Governor Deneen regarding published charges that the Louisville and Nashville Railroad had been classified improperly because of the Governor's friendship for the road's attorney, the commission issued a statement branding the story as false.

INDIANA

The Railroad Commission has been hearing testimony of fertilizer firms of Indianapolis and Fort Wayne who are seeking relief from what they deemed excessive freight rates. C. A. Bash, one of the principal witnesses, stated that the fertilizer men wanted a freight rate that will be equivalent to six cents per hundred pounds.

The Appellate Court upheld the right of appeal from the railroad commission, and refused to dismiss an appeal taken by the Monon railroad from an order of the commission. The unusual condition was presented of both parties to the appeal insisting that there was no right of appeal because of the invalidity of a law. The railroad commission which owes its own recreation and existence to the act in question, insisted that the act was all valid except two sections conferring the right of appeal from orders made by the commission. While the railroads admitted that those two sections are invalid, they asserted that the whole act is unconstitutional.

Under these circumstances the court called on the Attorney-General to defend the law, and its decision supports his contention as against both the parties.

Through the medium of the Commission Ft. Wayne manufacturers have obtained a material reduction in the rates charged by railroads for hauling coal from the Indiana mines and from the mines of Ohio, Pennsylvania and Virginia.

The Railroad Commission is pleased with the concession the railroads have made. "We regard this as the biggest thing the commission has done since its organization," said one of the members. Commissioner W. J. Woods had charge of the negotiations with the railroads.

KANSAS

Cyrus Anderson, secretary of the State Board of Railroad Commissioners, is sending out blanks to the various railroad companies operating in Kansas on which they make the annual reports to the railroad commission required of them under the Kansas law. For the first time in the history of the State the blanks conform exactly to the form used by the Interstate Commerce Commission, with the exception that specific information as to the operation of the roads within the State is required. Practically all the States with railroad commissions are using the same form of blanks this year, and it is expected that the use of these blanks will result in a uniformity of information that will be of great benefit to the various railroad commissions in hearing on freight rate cases. The Kansas report must be filed with the State Board of Railroad Commissioners not later than August 15. The statistics compiled will cover not only the operation on an entire system, but also the operation of each system within the State.

Carr W. Taylor, attorney for the

State Board of Railroad Commissioners, filed a complaint with the board against the Atchison, Topeka & Santa Fe, the Chicago, Rock Island & Pacific and the Union Pacific Railways for the purpose of securing a reduction in freight rates on cattle from Western Kansas points to Kansas City, Kansas. The suit is in reality an enlargement of the Clark County cattle case. The latter case was filed by Taylor against the Santa Fe alone. It dealt only with the cattle rates in Clark County. The new case, bringing in the Rock Island and Union Pacific, is general, applying to the whole State of Kansas.

LOUISIANA

The railroad commission has postponed its case against the Cumberland Telegraph & Telephone Company in re order to show cause why rates for toll service between points in Louisiana shall not be reduced. Also the case of the Shreveport Traffic Association and the Monroe Progressive League v. the Louisiana & Arkansas Railroad in re rates from Alexandria, Shreveport and Monroe to points on that line. The case of the citizens of Merryville v. the Jasper & Eastern, petition for depot at Merryville, was taken under advisement. In the case of the Texas & Pacific, asking to change the name of St. Charles Station to Hahnville, and in the case of the New Orleans Great Northern Railroad, asking to discontinue its agent at Claiborne station, the commission granted the requests. The commission then adjourned until August 6.

The following decisions have been handed down:

Order 539, the application of the Morgans' Louisiana & Texas Railroad & Steamship Company, for an advance in the minimum weight on lumber in carloads, was denied. Order 540, application of the Yazoo & Mississippi Valley Railroad Company for a modification of Order 500 and reducing the free allowance for guides and standards on shipments of lumber from 500 to 250 pounds, was denied. Order 541, petition for a readjustment of rates on cotton to compress points on the Vicksburg, Shreveport & Pacific Railroad, being covered by a suit now under consideration, the case was dismissed. Order 542, the case of the Monroe Progressive League v. the Vicksburg, Shreveport & Pacific Railroad, rates on cotton, dismissed. Order 543, Citizens of Flournoy v. the Missouri, Kansas & Texas Railroad, establishment of depot at that place, dismissed. Order 544, Victoria, Fisher & Western, export petition for advance in rates on lumber, petition denied and case dismissed. Order 545, change of name from St. Charles to Hahnville, granted.

MINNESOTA

Eric Olson, Dunnell, Minn., has filed a complaint with the State Railroad and Warehouse Commission and Governor Johnson that may open up the whole question of the classification of freight rates on railroads in the State of Minnesota. Mr. Olson in his complaint alleges "that nearly all freight rates on railroads in the State of Minnesota under the Western classification, including distance, terminal and commodity rates, are unreasonably high, extortionate and confiscatory of a farmer's property."

The complainant uses for his argument the interstate commerce rate on

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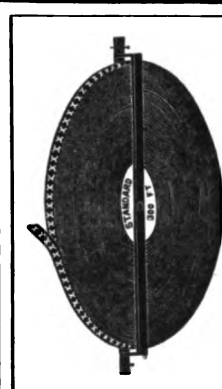
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NEW YORK

WRITE FOR CATALOG AND SAMPLES

steel nails shipped through the State. He contends that the Great Northern Railway terminal tariff from St. Paul to Moorhead, 240 miles, is 32 cents per 100 pounds or \$6.40 per ton. This is five times as much per ton per mile for nails in carload lots as the Great Northern's share of freight on nails shipped over the same road in interstate trans-continental traffic. He also calls the Governor's attention to the section of the law which provides for the removal from office of the commission by Governor for neglect of duty. The Governor, however, has not taken any action in the matter. C. F. Staples of the Railroad and Warehouse Commission, is going through the complaint in an endeavor to straighten out the matter.

Mr. Olson ends his complaint by stating that he had investigated the cost of Minnesota land grant railroads as taken from the annual report since 1872, and the annual incomes and expenses and found that after allowing a fair interest on the net capital invested that the net cost is less than the bonded indebtedness. Mr. Olson claims "that improvements have been paid for out of the surplus or extortionate earnings."

MISSISSIPPI

The Mississippi Railroad Commission has caused bewilderment among the common carriers operating in the State by making an increase of approximately \$12,000,000 in the assessment of their property in this commonwealth. The general increase amounts to about 33 per cent. and is applicable to all common carriers, railroads, telegraph, telephone, express and sleeping car companies being treated alike.

TEXAS

The Railroad Commission has addressed the following letter to the general freight agents of all Texas railroads, which is self-explanatory:

"DEAR SIR—By the issues of the Southwestern Tariff Committee and otherwise, this commission is informed that effective July 5, 1906, the rates from St. Louis and other interstate points to certain points in Texas will be increased on shipments taking class rates and on commodities subject to class differentials, which increase is considered unjust and unreasonable.

"It is believed that relief can in a measure be afforded by reducing the rates from the affected territory to such an extent as will allow the jobbing business located therein to compete with similar concerns not so affected. Unless the situation is promptly remedied by the voluntary action of interested railroads, the commission will feel compelled to set the matter for public hearing. Please let us hear from you."

The following letter is self-explanatory:

B. S. Woodhead, Secretary Continental Lumber Company, Houston, Texas:

DEAR SIR—We beg to acknowledge receipt of your favor of the 11th instant inclosing circular letter from the Gulf, Colorado & Santa Fé Railway Company announcing a considerable advance in the rates on lumber from East Texas points to Port Arthur and Sabine Pass. In reply we beg to advise:

The railroads have for a long time—foremost among them the Santa Fé—contended that on all shipments of whatever character going to the seaboard from interior Texas points with ultimate destination beyond the State, the rates made by the Railroad Commission of Texas are not applicable; and

there is some ground for that contention, although the Railroad Commission has always disputed the proposition. This applies to traffic coming in as well as going out of the State, and the issue was sharply drawn about three years ago on shipments of grain from Texarkana, Tex., to points within the State, the Santa Fé Railroad refusing to recognize the commission rates, but contended that the shipments were made from the Northwest to Texarkana for the purpose of reshipping into Texas, and was, therefore, interstate commerce. We took up one of these cases and prosecuted it in order to make a test case, and filed suit at Fort Worth with Attorney General Bell representing the State. The State won the case in the District Court and again in the Court of Civil Appeals, and again in the Supreme Court of Texas; but the Santa Fé has taken the case to the Supreme Court of the United States, where it is now pending and it will probably be two years before it is finally decided.

Shippers have the same right to test this law as the State. If the rates made by the Railroad Commission of Texas apply to the class of shipment you make, then upon failure to protect the commission rate the railroad is subjected to a penalty, in favor of the shipper in each case, of not less than \$125 nor more than \$500, in addition to the excessive freight collected. See Art. 4575, Revised Statutes.

I think that the shippers in Southeast Texas should make a test case on their own account.

In this connection I beg to call attention to the fact that all the principal lines of railroad have filed suit against the Railroad Commission of Texas in the Federal Court here at Austin, in which they seek to cancel all our rates and to have established by the Federal Court the proposition that we have no power to make rates on shipments that go beyond the limits of the State. The suit is more far reaching than any litigation ever had heretofore between the commission and the railroads. It is almost a death grapple between the State and the railroads. If their contention is correct, then there will be very little left for the State to do except stand and deliver without murmur.

Very truly yours,
ALLISON MAYFIELD,
Commissioner.

The Gulf, Colorado & Santa Fé, the International & Great Northern, and nearly all other railroad companies doing a business in Texas, have filed suits in the United States Circuit Court at Austin attacking the entire body of rates established by the Railroad Commission of Texas since February 28, 1899, which was the date the compromise of the suits instituted by the railroad companies in the latter part of 1899 became effective.

The trial of the cases will probably take place at the January term of court.

VIRGINIA

The State Corporation Commission has served an order on the express companies operating in this State to appear on August 1 and show cause why the new rates prescribed by the commission should not become effective.

The power to fix rates is vested only in the State Corporation Commission, according to a decision rendered by Judge Henry W. Holt in the case of the Commonwealth of Virginia against the Baltimore & Ohio Railroad at Staunton.

THOS. C. MOORE

FREIGHT TRAFFIC MANAGER

405

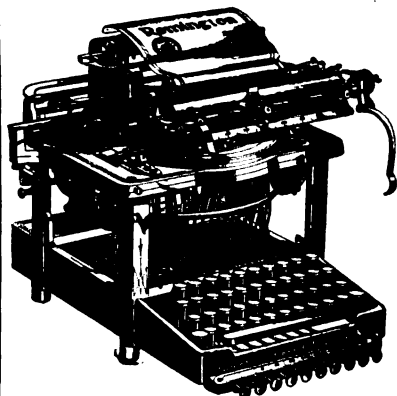
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Judge Holt holds that the Churchman 2-cent mileage bill is unconstitutional.

The suit was instituted by Commonwealth's Attorney Carter Braxton at the instance of Delegate John W. Churchman, of Augusta, patron of the bill, who desired a test of the law which requires railroad companies to place mileage books of 500 miles transportation on sale at \$10 a book. Mr. Churchman applied at the Baltimore & Ohio ticket office for a mileage book and was refused, the agent advising him that the company did not intend to respect the Churchman 2-cent mileage law.

Judge Holt's opinion which is concise and to the point overrules the defendant's demurrer on five counts but sustains it on the ground of unjust discrimination.

The first two exceptions are unimportant. The third section of Judge Holt's opinion is as follows: "It is further said that the power to prescribe rates invested by the State constitution exclusively in the State Corporation Commission and that any attempt by the Legislature to exercise this function is unconstitutional and void.

"Rate-making power is one that falls naturally within the domain of the Legislature as indeed does all the law-making power of the State and the presumption is that such powers continue until their absence is made to affirmatively appear."

Section 5 recites that it has been claimed the rates now in force have been approved by the corporation commission but disclaims any knowledge of such approval, the claim being that the approval flows from acquiescence. This it states cannot be true.

The concluding or sixth section of the opinion recites the claim of the defense that the legislation in question violates that part of the Federal Constitution which forbids the taking of property without due process of law and which guarantees to all persons the equal protection of the laws.

The opinion concludes: "Whether we assent to this reasoning or not it is so written and to this unambiguous declaration of the Supreme Court of the United States there is nothing to add; its judgment on Federal questions is the law of the whole land."

"The court is, therefore, of opinion that said act of March 15, 1906, is in violation of the Fourteenth Amendment to the Federal Constitution, and, therefore, void. This proceeding must be dismissed."

The freight rate hearing before the corporation commission has gone on during the month, among the witnesses having been Controller J. W. Cox and Traffic Manager T. S. Davant, of the Norfolk & Western.

The commission has heard argument by counsel on the constitutionality of the Churchman 2-cent passenger rate bill, and a decision is expected within a few days. William B. McIlwaine appeared for the Atlantic Coast Line and Attorney General Anderson for the State. There seems to be some reason for the belief that the Churchman Act will not be enforced.

PERSONAL MENTION

BOYLAN.—Henry B. Boylan has been made local freight agent of the Santa Fe at Galveston.

CARY.—H. F. Cary has been appointed Assistant General Passenger Agent

of the Southern Railway, with headquarters at Washington.

CHALENOR.—L. E. Chalenor has been appointed chief assistant to the General Freight Agent of the Seaboard Air Line at Portsmouth.

KINDEL.—George J. Kindel has been presented with a fine painting in oil of himself by the noted Hungarian artist, Kleitsch, by his friends of the western slope of Colorado, in appreciation of his work of securing freight rate reductions in favor of Colorado and the West. Mr. Kindel recently expressed his willingness to accept an appointment on the Interstate Commerce Commission.

LEVIS.—Walter P. Levis, manager of the Montgomery, Ala., Freight Bureau has resigned, owing to ill health. The bureau is temporarily in charge of Secretary W. S. Black.

McMILLAN.—A. B. McMillan has been appointed Freight Claim Agent of the Southern Railway, with headquarters at Knoxville.

NIXON.—Col. W. C. Nixon has been made vice-president and general manager of the St. Louis & San Francisco, with headquarters in St. Louis.

OTIS.—R. R. Otis has been appointed general agent of the Mobile & Ohio at Atlanta.

REYNOLDS.—E. T. Reynolds has assumed his duties as traveling freight agent of the Pere Marquette, with headquarters in New York.

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Wholesale Dry Goods

Demand for American Goods in Foreign Markets

(These reports are collected from a number of sources, all of which are believed to be thoroughly reliable.)

The government of one of the Australian States is calling for tenders to supply wire netting for rabbit fencing to the value of \$100,000. It has decided to submit the business to public competition.

In Guatemala the project for establishing all-rail connection with the east coast seems much nearer realization. Steps have already been taken for the rehabilitation of the old railway from Puerto Barrios to the interior and the filling in of the sixty-mile gap between its terminus and the city—Guatemala City. It is thought that the road will be in operation within a year or eighteen months. If the opening of this through rail connection between Puerto Barrios and Guatemala City results in competition in rates with the Southern Railway (from Guatemala City to the Pacific port of San José), as it surely will unless some sort of combination is effected between the two roads, it will reduce the cost of importing goods from our Pacific Coast States. The present rates on the Southern, which are non-competitive, are extremely high. It is altogether probable that competition will bring reductions which will keep the cost of transporting goods to Guatemala City from San Francisco lower than from New York. New York shipments must be carried approximately 2,000 miles by sea and 170 miles by rail, while from San Francisco the sea distance is but little more (2,500 miles) and the rail distance is much less (74½ miles) through a less difficult country than the new road will traverse.

The demand for sewing machines is noted in South Africa.

A dealer, going over the various good points of the different makes, states that the Boers or Colonials are partial to the German designs, because they are cheap and appear to fill the bill for their purposes as well as the higher priced ones. The German makes selling from \$10 for a hand machine to \$35 for the best foot power product, yet the exporters in Germany fail to supply the dealers with extra parts, and as a consequence when needles break or more serious injuries are found there is nothing with which to remedy the defect and the machine is more or less worthless. In the course of time a solicitor comes along and in-

duces the owner to trade in the broken machine for a more expensive English make upon the monthly payment plan. American manufacturers who contemplate bidding for this trade should bear these facts in mind and keep their representatives well supplied with extra parts. The higher priced articles are disposed of on terms at from \$40 to \$100, and a few at higher prices. The duty is 10 per cent. ad valorem.

In the city of Harput, Turkey, there has recently been established a store which intends to make a specialty of American goods and wares.

Large quantities of candles are consumed in Syria. Those of domestic production are handmade and of poor finish. The materials used in making them are paraffin and stearin (imitation bees' wax), and in some instances real wax is used. Most of the foreign candles consumed in Syria are of French make. They are imported through commission houses and are sold to Syrian wholesale dealers; a credit of three or four months is usually given. Practically all the business of Syria is in the hands of commission merchants.

Inasmuch as statistics are not available in Turkey it is impossible to state the exact amount of the candle importations; it is known, however, that the consumption is very large. Candles are used in every home and hut in city and country. They are used in the houses of the wealthy natives as well as in the tents of the nomad tribes. Large quantities are furnished to the hotels and churches. They are an important feature of all religious ceremonies. During the celebration of marriages the guests hold long lighted candles, which they carry away to their homes when they depart. Persons desirous of bringing good fortune to relatives and friends, or hoping to draw the blessings of heaven upon themselves, frequently keep from one to five candles constantly burning upon the church altars. The Mohammedans also use them in their places of worship.

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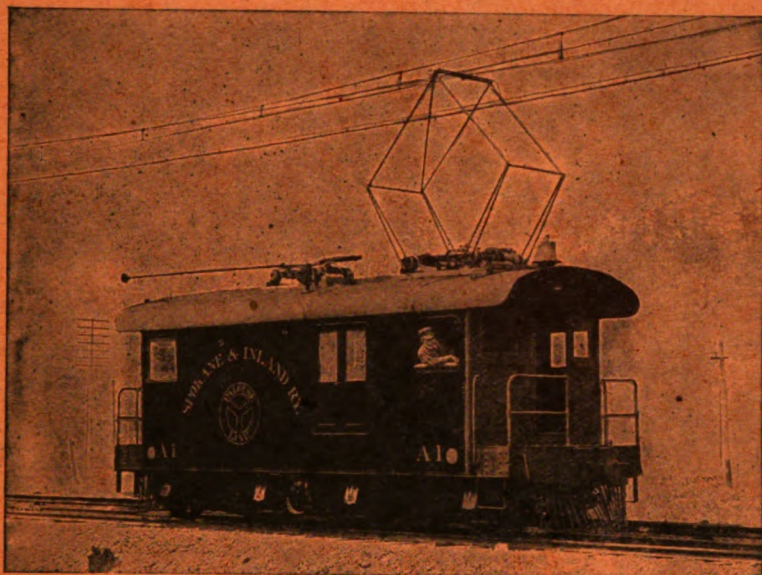
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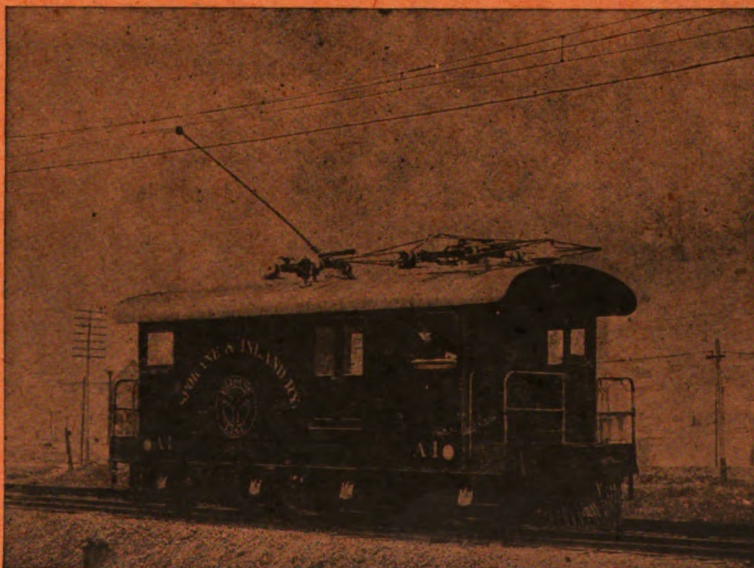
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FREIGHT THE SHIPPERS' FORUM

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Prominent Features of the New Rate Law

BY S. H. COWAN, FORT WORTH, TEX.

I SHALL not attempt a discussion of the changes in the law which brings under its jurisdiction pipe lines, express and sleeping car companies, and what I shall say has reference mainly to shipments of freight by rail.

The object of the act in the beginning was to increase the powers of the Interstate Commerce Commission over the matter of rate adjustments; in other words, to give the Commission power to fix rates under certain circumstances, in order to make them conform to the standard fixed by the law, which prohibits unjust and unreasonable rates and those which constitute unjust discriminations and undue and unreasonable preferences or advantages.

Most Vital Provision of the New Law

This, the most vital provision of the new law, is contained in the amendment to Section 15 of the original Act to Regulate Commerce. The amended section is as follows:

"That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged or collected, by any common carrier or carriers, subject to the provisions of this act, for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and that regulation or practice in respect to such transportation is just, fair and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed

in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists; and this provision shall apply when one of the connecting carriers is a water line.

"If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

"The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this act."

Summary of Changes

The changes which this amendment effects in the law may be summarized as extending the powers of the Commission as follows:

1. To prescribe the just and reasonable and non-discriminatory rate to be charged, which shall not thereafter be exceeded.
2. To prescribe just, fair and reasonable regulations and practices affecting the same, to be thereafter observed.

3. To direct that the carriers cease and desist from any violation of the act to the extent it is found to exist.

4. To establish through routes and joint maximum through rates.

5. To prescribe the division of the rates where carriers fail to agree.

6. To fix the maximum allowance to be paid for services or facilities furnished by the shipper of freight.

7. To fix the time when its orders shall take effect at not less than thirty days.

The standard of duty for the carriers provided in Section 1 is, in the main, the requirement that all charges shall be just and reasonable, as was provided by the old law, and the added requirement that such carriers shall provide and furnish all "transportation," which term includes everything done in shipping and handling freight, upon reasonable request, and publish through routes and just and reasonable rates therefor. There are further provisions with respect to prohibiting passes and requiring the establishment of switch connections, furnishing cars, etc.

Duties of the Carriers

The duties of the carriers prescribed in amended Section 15 are:

1. To observe as a maximum the rates prescribed by the Commission.

2. To conform to the regulations and practices prescribed by the Commission.

3. To obey orders of the Commission while in effect. The orders are effective not over two years.

Section 16 is the administrative section, which, after giving power to the Commission to make an award of damages to the complainant, who may be found to be entitled thereto for violation of the act, and after providing the method of serving all orders upon the carriers and authorizing the Commission to suspend and modify the same, prescribes the general duties of the carriers as follows:

"It shall be the duty of every common carrier, its agents and employes, to observe and comply with such orders, so long as the same shall remain in effect." (Having reference to the orders authorized by Sec. 15).

The penalty against the carrier or any agent or representative thereof, for disobedience of an order made under Section 15, is a penalty of \$5,000 for each offense, and in case of continued violation each day is made a separate offense. It is this penal provision which makes the orders of the Commission self-executing.

This penalty is authorized to be recovered on behalf of the United States. It is made the duty of the district attorneys, under the direction of the Attorney-General, to prosecute suits for the purpose of collecting the same, and the Commission is authorized to employ special counsel in such proceeding. The old law remains unchanged in that provision requiring the Commission to enforce the act.

The Commission is also authorized to bring suit in the Circuit Court for the purpose of obtaining an in-

junction or mandamus to compel obedience to its order, as an additional remedy to the penalty.

The foregoing constitutes the main framework of the extended powers of the Commission over the amount of the rates and over regulations and practices affecting the same, the duties of the carriers in respect thereto and penalties for non-observance. These powers and duties are very broad when once brought into play.

Limitations Upon the Commission

It will be observed that there are certain limitations upon the right of the Commission to act at all, and these may be enumerated as follows:

1. It can only act after full hearing upon complaint; in other words, there must be a violation of the law charged before the Commission can prescribe a rate, regulation or practice.

2. The Commission must find that the rate, regulation or practice is in violation of the act prohibiting unjust or unreasonable rates, unjust discriminations, undue preferences, or that there is some other violation of the act complained of, before it is authorized to prescribe a rate, regulation or practice.

3. Where these conditions precedent are fulfilled, the power of the Commission to determine and prescribe a rate to be observed as the maximum, or to prescribe a regulation or practice to be followed, is as complete as Congress can vest in the Commission; and in my opinion not subject to be set aside by any court until it is shown to violate a constitutional property right.

4. The power to establish through routes is limited with the proviso that no reasonable or satisfactory through route exists. While the act does not define who shall be satisfied or to whom it shall appear to be reasonable, the fair inference is that those facts must be determined by the Commission.

5. The power to fix an allowance for services or facilities furnished by a shipper can only be exercised after hearing upon complaint.

Vested With Certain Discretions

The Commission is vested with certain discretions which may be enumerated as follows:

1. The general discretion as to whether it will examine into the complaint which is made at all.

2. The broad and unlimited discretion to determine whether the act complained of is a violation of the law.

3. Having made an order, to determine the time within which it shall take effect.

4. The right to suspend or modify such order.

5. The apportionment of the division of the through rate, where the carriers in the specified cases fail to agree among themselves.

6. The determination of what is a reasonable allowance for services or facilities furnished by the shipper.

7. What is a reasonable and satisfactory through route and what through route and reasonable maximum rates it shall establish.

8. And to grant a rehearing, but not on that account to suspend an existing order.

Subjects Within the Commission's Power

The subjects to which the power of the Commission apply are defined in the first section of the act, and, broadly speaking, include about every imaginable service to be performed by a common carrier. It includes, in the most comprehensive as well as specific manner, all the instrumentalities of shipment or carriage and every handling of the property or service connected therewith.

Section 6 of the original act is amended to provide in detail for the filing and publication of all tariffs, joint and single, under the direction of the Commission; it prohibits changes in tariffs with less than thirty days' notice, but authorizes the Commission to modify that requirement. It prohibits any carrier from engaging in interstate transportation except upon the published rate, and prohibits any variance from the published charges. It makes it a misdemeanor to willfully fail to file and publish tariffs or to observe same, subjecting the corporation to a fine of not less than \$1,000 nor more than \$20,000 for each offense; defines and prohibits rebates and restores the imprisonment penalty against persons who give or accept, or offer to give or offer to accept, any rebate or other variance from the published transportation charges. The Commission may modify any requirement of Section 6 respecting the time and manner of filing tariffs.

Section 14 of the original act is so amended that the Commission is not required to make findings of fact except where it awards damages, but it is required to make a report in writing stating its conclusions, decision, order or requirement, which when published are made competent evidence in all courts without further authentication.

Amended Section 16 authorizes the Commission to make an order in favor of the injured party against the carrier for such damages as may be sustained by reason of violations of the act, which under the old act was called "reparation," and on failure of the carrier to observe the order for payment of the money, the injured party may sue in the United States court to recover same, in which suit all the parties before the Commission may be made parties plaintiff or defendant, and the jurisdiction is fixed in any court where any plaintiff might sue any one of the defendants. In this latter particular it simplifies the procedure so as to afford a real remedy to numerous shippers, which was difficult under the old law.

Court Review Feature

The so-called court review feature is as follows:

"The venue of suits brought in any of the Circuit Courts of the United States against the Commission to injoin, set aside, annul or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made had its principal operating office, and may be brought at any time after such order

is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia, then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts."

While the jurisdiction is given and the venue fixed in the Circuit Courts to hear and determine suits brought to set aside, annul or suspend any order or requirement of the Commission, the law does not provide the ground upon which a decree in such a case may be based. It is claimed that therefore it is unlimited, but that that claim is erroneous. Without this provision, manifestly the Circuit Courts of the United States would have had jurisdiction under the judiciary act to hear and determine such a case upon an allegation that the act of the Commission was violative of some constitutional right or in excess of the powers given by the enabling statute, but that jurisdiction would only have extended to cases involving more than \$2,000.

The ground upon which such suits might be maintained, with or without the special jurisdiction conferred, must be determined by the *character* of the Commission's order. If, as seems clear, the orders of the Commission, made by virtue of the powers conferred, are legislative in character, or, if you please, administrative, equity will only take cognizance of a case to set aside or annul such order, except where it is shown that the same is in excess of the powers conferred by the enabling statute or in violation of some constitutional right of property, which Congress could not have committed to the Commission for its exclusive determination. It must not be overlooked that the fifteenth section as quoted gives the absolute and unlimited power to the Commission to fix just and reasonable maximum rates, and no power is given to the court expressly to review that discretion. The fact, therefore, that it is given jurisdiction to hear such a case in no sense extends the power of a court of equity to review the discretion of the Commission, except to determine whether it has acted within the limits of its powers as prescribed by law or whether its act violates a constitutional right of property. All other questions are committed to the Commission to determine.

Restrictions Upon Court Action

Certain restrictions are placed, however, upon the action of the court, viz.: That the act to expedite hearings in cases in equity apply, which requires three circuit judges or two circuit judges and a district judge to pass upon applications for injunction, and prohibits interlocutory injunctions upon less than five days' notice to the Commission. Appeals lie directly to the Supreme Court of the United States, and such cases are given precedence over all other cases except cases of a similar nature and criminal cases.

There are many wise and salutary provisions in this bill which are valuable aids to the Commission and to litigants in the ascertainment and determination of

the facts necessary to a proper execution of the foregoing powers. As an example:

Copies of all schedules, tariffs, agreements, reports, statistics and the like on file with the Commission are made competent evidence and prima facie of what they purport to be. The Commission is authorized to require uniform accounts and records to be kept by the railroads and annual reports thereof, or monthly reports or special reports covering particular affairs to be made to the Commission, with the most elaborate showing of everything pertaining to the entire operation and finances of the railroad. Other accounts and reports are prohibited under penalties, and there are penalties for falsifying the accounts. The Commission is authorized to appoint inspectors and examiners, who may swear witnesses and take evidence, and who may at any time examine into any part of the records of any railroad or corporation subject to the provisions of the act and thus enable it to secure accurately at first hand information not colored by adroit and willing witnesses. This will much lighten the work of the Commission and will enable complaints at the expense of the Government to have the Commission secure all that character of information that is necessary to enable it to perform the duty of determining the facts in each particular case, which heretofore it has been next to impossible to prove.

One of the most important provisions of this act is that it requires the giving of through bills of lading and makes the initial carrier liable for all damages to the goods, with the right to recoup against the connecting carrier upon which line the injury happened.

The Commission is increased to seven and their salaries to \$10,000 per annum, a very merited advance. The law ought, in justice, to have made some other advances in salaries—for example, the secretary, assistant secretary and solicitor.

Excepting out of this review the pipe lines, it seems to me the provisions of the law are clearly within the limits of the Constitution.

Wherein the Law Could Have Been Better

The new law, in every particular and in every provision, is an advancement over the previous law, strengthening it, making it better, and conferring the express power upon the Commission to prescribe the rates, regulations and practices. It takes no backward step. I consider it an excellent law. The only particulars wherein I think it would have been more beneficial, as it appears to me, are:

1. It would probably have been better had it given the Commission the power to prescribe absolutely the differential or relation of rates in force upon a line of railroad as between the places which it serves and as between the commodities which it carries, without fixing the rate itself, or without the indirect method of an order to "cease and desist." Practice, however, under this law may show that the same thing has been accomplished by the provision which gives the Commission the power to "make an order that the carriers

cease and desist from such violation to the extent to which the Commission finds the same to exist." If in a case where the Commission finds there exist discriminations or preferences in the rates on co-related commodities—for example, wheat and flour, corn and cornmeal, live stock and dressed meats, or any such co-related commodities—it makes an order that the carrier "cease and desist" such discrimination or preference, and the penalty for violation of such an order shall be enforced, then of course no further provision upon that subject would be absolutely necessary. It appears entirely plausible that the Commission should adopt that theory and that the courts would sustain it as being clearly within the Commission's power. Should it be held otherwise, however, the law could be further amended to give the power to fix the relation of rates directly. It is admittedly true, however, that the Commission may correct the discriminations and preferences by fixing the maximum rates; and it is also true that the railroads might, if they see fit, reduce one of the rates and not the other below the maximum fixed, and thus avoid the effect of such order of the Commission, unless the power to make an order to "cease and desist" would enable the Commission to control it. It seems probable that it would.

2. The Commission should probably have been given the power to proceed without complaint upon its own motion as well in making an order as in making an investigation. It may investigate without complaint, but can make no binding order without complaint.

3. The other particular in which it appears that this law could be materially benefited (though perhaps better by an independent bill) is to provide for the valuation of the railroad properties under the direction and supervision of the Commission. It is true that the Commission, in order to determine whether the rates are reasonable, may inquire into the value of the property as one of the factors in any case, but that has proven entirely unsatisfactory for the want of reliable and satisfactory evidence upon the subject, and in almost every case it has been left to the mere guess; and the Commission has practically abandoned that effort, and will have to continue to perform its duties without this important knowledge of one of the principal factors in the equation, unless the Government provides for the valuation of railroad property. I shall not attempt to make an argument upon the subject, as that would require too much space, but it seems to me the argument has all been on the side of obtaining said valuation. Senator La Follette made a very exhaustive and learned address in the Senate covering the particular subject in detail, which every one interested in the subject should read. Of course, it will often happen that in determining what rate ought to be prescribed the question of valuation will be practically unimportant, but when it comes to the people being able to know what returns the railroads are making upon their actual investment in order to be able to determine the

extent to which they ought to be regulated, or to determine the fairness of the schedule of rates as a whole, the valuation is of prime importance, as it is always an important fact for the Commission to have before it. I should say it is of as much or more importance for the purpose of informing the public and for their protection than it is to enable the Commission to fix a particular rate on a particular class or commodity. I do not, therefore, entirely agree with Senator La Follette that valuation is of such vital importance in fixing a particular rate.

Manner of Inforcing the Law

The most important question now is, the manner of enforcing the law. The Commission will no doubt be alive to this feature, and, with the new powers at its

command and the addition to its numbers, be better able to expedite the disposition of cases before it. It must not be expected that every complaint is a just one, and the public should receive with patience adverse decisions, but it will not be patient; and the result will be that the public will be disappointed, not because the law is wanting in fixing the legal duty of the carrier or in giving to the Commission powers sufficient, but because of the impossibility of promptly satisfying the thousands of complaints that will be filed as soon as the new law becomes effective.

One thing can be said which ought to satisfy those who desire to remedy rate abuses by suits in court, and that is, that remedy is complete to enforce any order of the Commission, should the carriers take chances on the penalty to violate an order of the Commission.

Relation of the U. S. Courts to the I. C. Law

BY JOHN B. DAISH

It is not the purpose of this paper to consider more than the relation which the United States Courts bear to the subject of interstate commerce as marked out in the Interstate Commerce Act. In several instances United States Courts have exercised jurisdiction of matters relating to interstate commerce which do not fall within or are permissible under the terms of the law. Such action by the courts is based upon a portion of the law—found in Section 22, reading: "Nothing in this act contained shall in any way abridge, or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies"; or under Section 9, of the act, by which one claiming to be damaged by a carrier subject to the law may bring suit in any district or circuit court of the United States, of competent jurisdiction. If one elect to proceed before the court he cannot prosecute the carrier before the Commission for the same cause of action.

Criminal Proceedings

For violation of the new provision regarding the issuance of passes, a common carrier is guilty of a misdemeanor, and on conviction is subject to a penalty of not less than \$100, nor more than \$1,000, for each offense. Should one who is not entitled to a pass or free transportation use or accept same he is subject to the same penalty. The jurisdiction of the United States Courts to hear and determine a matter of this nature is the same as under the Elkins Law, being any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted, and if the offense is begun in one jurisdiction and completed in another, it may be considered by the appropriate court in either jurisdiction.

A common carrier (or if a corporation, a director, officer, receiver, trustee, lessee, agent, or person acting

for it) who, either alone or with another shall (a) wilfully do or cause to be done, or, (b) wilfully suffer or permit to be done any act, matter or thing prohibited, or declared to be unlawful, or (c) shall wilfully omit or fail to do any act, matter or thing required by the act to be done, or (d) shall cause or wilfully suffer or permit any act, matter or thing directed or required to be done not to be done, or (e) shall aid or abet such omission or failure, or (f) shall be deemed guilty of any infraction of the act shall be deemed guilty of a misdemeanor and subject to a fine not to exceed \$5,000. Such cases are to be tried before the district court of the United States within the jurisdiction within which the offense was committed. If the offense be unlawful discrimination in rates, fares and charges, one convicted is liable, in addition to the fine, to imprisonment for two years in the penitentiary.

A common carrier, or if a corporation, its officer or agent, who shall knowingly and wilfully suffer or permit any one to secure transportation at less than the established rates by means of false classification, false billing, false weighing, or other device or means shall be deemed guilty of a misdemeanor and conviction in a court of competent jurisdiction within the district where the offense was committed, subjects the offender to a fine of not exceeding \$5,000 and imprisonment in the penitentiary for a term not exceeding two years, or both. A shipper who secures reduced transportation charges by any of the same means is deemed guilty of a fraud, which is declared a misdemeanor, and upon conviction in a court of competent jurisdiction within the district where the offense was committed is subject to the same punishment.

Penalty for Discrimination

If one by the payment of money or other thing of value or by solicitation or otherwise shall (a) induce a carrier, or its officers or agents to unjustly discrim-

inate in his behalf as against any other consignor or consignee, or (b) aid or abet any common carrier in such unjust discrimination, he is deemed guilty of a misdemeanor. If convicted in any court of the United States of competent jurisdiction, in the district where the offense is committed, he is subject to a fine not exceeding \$5,000 or imprisonment for two years, or both.

For wilfully making false entries, destroying or mutilating records, wilfully neglecting to keep full, true and accurate accounts, or keeping other accounts than those permitted subjects any offender to a criminal prosecution, for the violation is made a misdemeanor. The punishment is a fine of not less than \$1,000 nor more than \$5,000 or imprisonment not less than one nor more than three years, or both.

If an examiner of the Commission shall divulge information which comes to his knowledge except on order of the Commission or a court or judge, while his offense is not named, he is subject, on conviction, to a fine of not more than \$5,000 or imprisonment not more than two years, or both. Such an offender is to be prosecuted in any court of the United States of competent jurisdiction.

For a violation of a proviso relating to interchangeable mileage tickets, and the filing of the rates for same, and the conditions relating thereto, the carrier is subject to a punishment, as provided by Section 10, as amended March 2, 1889. As that section provides for certain violations a fine and for others fine and imprisonment it is uncertain what is the punishment for violation of the proviso.

Failure to report accidents is a misdemeanor and the carrier is subject, upon conviction in a court of competent jurisdiction, to a fine of not more than \$100.

It is an offense for any person to refuse or neglect to attend and testify in obedience to a lawful order of the Commission. One convicted before a court of competent jurisdiction is subject to a fine of not less than \$100 nor more than \$5,000, or imprisonment not more than one year, or both.

For offering, granting, giving or soliciting, accepting or receiving any rebate, concession or discrimination by which property is transported at a less rate than the published tariff is declared unlawful. Every one so violating the law, be he corporation or natural person, is guilty of a misdemeanor, and subject, upon conviction in any court of the United States having jurisdiction of crimes, to a penalty. If a corporation, the penalty is a fine of not less than \$1,000 nor more than \$20,000; if a natural person the penalty includes as well, liability to imprisonment in the penitentiary for a term not exceeding two years, or both. Criminal action under this section must be brought within the district within which such violation was committed, or through which the transportation may have been conducted, or if the offense be begun in one district and completed in another, then in either of them.

If a carrier fail to file and publish tariffs or strictly to observe them it is guilty of a misdemeanor, and

the corporation is subject to a fine of not less than \$1,000 nor more than \$20,000 for each offense.

One of the most important criminal provisions relating to interstate commerce, if it shall ultimately be held to apply, is Section 5440, Revised Statutes. In the present state of the decisions, the Circuit Courts are at variance as to the applicability of this section. It has been held to apply and also held not to apply. As the imprisonment features of the Interstate Commerce Law have now been restored, it is likely that this section will apply. By it, conspiracy to commit an offense against the United States, if one of the parties do any act to effect the object of the conspiracy, makes all parties to the conspiracy liable to a penalty of not less than \$1,000 nor more than \$10,000, and imprisonment not more than two years.

It is made the duty of the Attorney-General, upon the application of the Interstate Commerce Commission, to institute in proper courts proceedings for a punishment of all violations of the act.

Forfeitures

Several forfeitures are provided for by the law. It is made the duty of the Attorney-General to institute in proper courts proceedings to recover, in the name of the United States, these forfeitures.

Knowingly failing or neglecting to obey any order of the Commission (made in pursuance of Section 15) subjects the carrier, officer, representative, or agent or receiver, trustee, lessee or agent to a forfeiture of \$5,000 for each offense, and every distinct violation is a separate offense; in a continuing violation each day is a separate offense. Such forfeitures are to be recovered in a civil suit in the district where the carrier has its principal operating office or in any district through which the road of the carrier runs.

Failure to make annual reports as required or to answer any authorized question within thirty days from the lawful time, or failure to file special reports or reports of earnings and expenses if required, subjects the carrier, person or corporation to a forfeiture of \$100 for each and every day it shall be in default.

A forfeiture of \$500 per day is provided for a carrier, receiver or trustee who shall (a) keep accounts other than those presented by the Commission, or (b) fail or refuse to keep the accounts prescribed by the Commission, or (c) to submit these accounts to the inspection of its authorized agents.

The Attorney-General may sue to recover in the name of the United States from one who knowingly receives or accepts a rebate three times the value thereof as a forfeiture. Such civil proceeding is to be brought in any court of the United States of competent jurisdiction.

The Interstate Commerce Commission having lodged with a district attorney verified information concerning violation of the Safety Appliance Act, it is his duty to sue for a penalty of \$100 for each violation. Such suits are to be brought in the district court where the violation shall have been committed.

Suit for Damages

Suit may be brought by one injured for the full amount of the damages caused by a common carrier, if it shall do or cause to be done anything prohibited by the act, or omitted to be done if required by the act. Judgment may include a reasonable attorney's fee. Suit to be brought in District or Circuit Court of the United States of competent jurisdiction.

One who secures an unjust discrimination against another consignor or consignee by the payment of money or other thing of value, or by solicitation or otherwise, is made jointly liable with the carrier to an action on the case caused by or resulting from such discrimination. The suit by the consignor or consignee discriminated against is to be brought in any court of the United States of competent jurisdiction.

Suits to Compel Obedience to the Orders of the Commission

If the carrier fail to obey an order of the Commission awarding damages, the complainant or any party for whose benefit the order was issued may, within one year from the date of the order, file in the Circuit Court of the United States a petition, setting forth the causes for which he claims damages and the order of the Commission. The court in which such suit is brought must be in the district in which the plaintiff resides, or in which the carrier has its principal operating office, or through which the road of the carrier runs. The plaintiff is not liable for costs in the Circuit Court or on appeal unless the appeal is brought by him. In cases of this nature, joint plaintiffs may sue joint defendants.

If an order be made by the Commission, and it be one other than for the payment of money, and it be disobeyed, any party injured may apply to the Circuit Court by petition for the enforcement of the order. That Circuit Court has jurisdiction in whose district the carrier has its principal operating office, in which the violation or disobedience occurred. The petition is to state the substance of the order and the respect in which it has not been obeyed. The court is to determine how the petition shall be served upon the carrier. And it is authorized to "prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue, and which may arise upon the hearing of such petition." Having had such a hearing as the Circuit Court deems to be necessary, and it appearing that "the order was regularly made and duly served," and that the carrier is in disobedience of the order, the court is to enforce obedience to the order by writ of injunction or other process. To enforce such process the court has the powers ordinarily exercised by it in compelling obedience to writs of injunction and mandamus. Appeals from such suits lie direct to the Supreme Court.

Suits to Vacate Commission's Order

The statute is silent on who may be plaintiff, but authorizes suits to be brought against the Commission "to injoin, set aside, annul or suspend any order or re-

quirement of the Commission." Such suits may be brought at any time after the order is promulgated. The suit must be instituted where the carrier has its principal operating office. If the order or requirement be against two or more carriers, the court sitting at the place of the principal operating office. If a carrier has its principal operating office in the District of Columbia, then the place of its principal office governs the place of instituting the suit.

The provisions of the "expediting act" apply to suits of this nature. The expediting act provides that it is the duty of the Attorney-General, when the suit of the kind just mentioned shall have been filed, to issue a certificate of the general public importance of the matter, whereupon the case is to be in every way expedited and heard at the earliest practical date before not less than three judges—either three circuit judges or two circuit judges and one district judge. Such proceedings are also applicable to the application for a preliminary injunction, which must not be granted until after the hearing, upon notice of not less than five days to the Commission. Within sixty days from the final decree of the Circuit Court appeals lie only to the Supreme Court.

Mandamus and Other Writs

The Circuit Courts and District Courts are authorized, upon the application of the Attorney-General, at the request of the Commission, to issue writs of mandamus compelling a common carrier subject to the act to comply with the provisions thereof.

On the relation of any one, who as relator is injured by reason of the carrier failing to remove his interstate traffic at the same rates as charged others, or upon as favorable terms and conditions as given like traffic under similar circumstances, the Circuit and District Courts are given jurisdiction to issue writs of mandamus. This remedy is cumulative and does not affect other remedies.

If the Interstate Commerce Commission has reasonable grounds for belief that a carrier is engaged in the carriage of passengers or property at less than filed published tariff or committing any discrimination forbidden by law, it may file a petition in the Circuit Court of the United States sitting in equity having jurisdiction. The court, if it find the allegations to be true, is authorized to enforce an observance of the published tariffs, or direct and require a discontinuance of the discrimination by proper orders, writs and process.

Auxiliary Functions of the Courts

Depositions for use before the Commission may be taken before a Judge of the United States court.

For disobedience to a subpoena, the Commission or any party to a proceeding may invoke the aid of any court of the United States.

Circuit Courts of the United States in the jurisdiction where the inquiry is being carried on, in case of continuancy or refusal to obey a subpoena, may issue an order requiring appearance and testimony before the Commission. Disobedience of such order of the court may be punished as contempt.

Bills of Lading and Uniform State Laws

BY GEORGE H. HULL, JR.

THE internal commerce of the United States is estimated by the Department of Commerce and Labor at approximately \$9,000,000,000 for the year 1880, \$14,000,000,000 for 1890, \$20,000,000,000 for 1900, and \$24,000,000,000 for the year 1905. Considering this rapid growth, it is not surprising that the financial vehicles and mediums of exchange devised for carrying it on, have at times lacked the capacity for accommodating the tremendous volume of transactions resulting from such headlong development.

Before the National Bank Act was put into operation, the currency system of this country was woefully inadequate for the demands put upon it by the requirements of our industrial development. Numerous systems of banking had been devised to remedy the deficiency, and so acute was the need of some circulating medium that all of these systems, despite their precariousness and instability, were more or less used, but ultimately they went to the wall without exception, some of them carrying in their wake the wreck and ruin of many business enterprises.

The National Bank Act aimed to place our currency on a sound basis, and its success in this direction is amply evidenced by the universal acceptability of our national bank notes in commercial transactions. The huge volume of transactions, however, which goes to make up our internal and foreign commerce, is accomplished only in small part by the actual employment of this circulating medium. As a matter of fact, no less than 90 per cent. of these operations are affected through the instrumentality of credit based largely upon security in some form of real or personal property. It is, therefore, obvious that if anything should occur to invalidate the security upon which this structure is founded, a withdrawal of credit would ensue and business operations would be brought to a standstill.

Stability Is Vital

A large percentage of the internal business transacted in this country involves the transportation of goods by a common carrier. Each shipment necessitates the issuance of a bill of lading by the railroad company to the shipper, which, broadly speaking, purports to represent the goods while it is outstanding, and these bills of lading are what constitute the security upon which is built up the intricate system of credit by means of which our vast internal commerce is carried on. It is of vital importance, therefore, that these instruments of credit should possess every element of stability, as anything which tends to invalidate the principles from which they derive their character as negotiable documents is aimed directly against the foundations of our financial system.

There is probably no branch of business in which

unforeseen accidents involving loss of property occur more frequently than in that of railroad transportation. When advances of money are obtained upon goods transported by an ocean carrier, the bill of lading is regularly accompanied by an insurance policy, but since no such provision is made in connection with rail shipments, an unattached liability is turned loose upon the business community whenever a cargo of freight is lost or damaged; and, strange to say, the innocent banker is frequently singled out by the courts from the resulting chaos of litigation and compelled to bear the brunt of these losses. Accordingly, when a banker is asked to advance money on a security conditioned upon such uncertainties, he must either charge an exorbitant rate of interest, sufficient not only to compensate him for the use of his money, but also to cover the extraordinary risks arising from the absence of adequate insurance, or being unwilling to assume this double capacity as banker and underwriter, he must decline the loan entirely.

The Matter of Insurance

This aspect of the situation is depicted, not for the purpose of defining the respective obligations which properly should devolve upon the different parties concerned in a bill of lading operation, as that would necessitate an entrance into detail leading far beyond the scope of this article; it is introduced simply as a basis for the conclusion: That, in the field of risks incidental to the transportation of merchandise by rail, there is an extensive province to be opened up by the insurance company, and until this province is thoroughly occupied and the risks completely covered by reliable insurance, the railroad bill of lading will not be received among bankers with the degree of confidence that it should possess in order to properly fulfill its functions as a negotiable instrument.

But there is still another phase of the bill of lading problem taking its origin from certain laws existing in many States which act as a menace to the purchaser of a bill of lading, by casting a cloud of uncertainty upon his title to the underlying property. According to the tenor of these laws, it is held that when a bill of lading is issued by a carrier against goods received for transportation, the transfer of this bill of lading to a bona fide purchaser for value, or to a person advancing money upon it, does not confer upon such person a positive title to the underlying goods, for they may subsequently be followed and attached by an outsider who had previously sold them to a customer on credit and failed to obtain payment therefor. In other words, A may sell goods to B on credit; B may deliver them to a railroad company for shipment, and receive their bill of lading, afterward offering it to his bank with draft attached for discount. The banker, of course,

having no means of knowing the past history of the goods, makes the advance. Subsequently, A, failing to extract payment from B, follows and attaches the goods, and the law sustains his title, while the banker's title, represented by the bill of lading, is swept aside and he is compelled to stand the loss.

The injustice of such a law is obvious. In selling goods to B on credit in the first place, A has knowingly and voluntarily incurred the ordinary commercial risk consequent to the operation of a mercantile business. His security consists merely in what he knows of B's responsibility, and, having accepted this for what it is worth, he is entitled to the law's protection just so far and no farther; and in attempting to extend special protection over such a creditor, to wherever the goods may penetrate in the channels of trade, the law has encroached upon the rights of others.

Little Good; Much Harm

It would probably be conservative to say that, out of a thousand ordinary mercantile transactions, perhaps not more than one or two creditors are saved from a loss by this law designed to protect them against defaulting debtors, and this is the extent of its capacity for good. On the other hand, its capacity for harm is far reaching, for not only does it encourage laxity and carelessness among merchants in advancing credit to irresponsible customers, but as the germ of evil within it continues to break out more frequently on the surface in the form of losses to innocent parties, the bill of lading is becoming more and more an object of avoidance among bankers, who are steadily becoming less willing to accommodate the exigencies of trade by advancing their credit upon so precarious a foundation.

The particular function of a banker in transactions of this nature is to facilitate credit operations by advancing money upon the security of a document of title the validity of which he has no reason to question, and consequently when the law concentrates in a bill of lading every possible risk through which a lot of goods may pass, it is not surprising that some bankers will make no loans whatever on bill of lading security; that some accept them sparingly; while others lend upon them indiscriminately until they have sustained a loss, when they promptly join the ranks of the total abstainers.

The question, then, which naturally arises is whether the game is worth the candle; whether it is worth while to block the channels of credit involving the business of entire States for the sake of so infinitesimal an object as that which these laws were originally designed to serve; or whether it would not be a much wiser policy to promote credit on a sound basis and stimulate business development by repealing the present law and by substituting one that would transform a railroad bill of lading into a thoroughly sound and trustworthy document of title.

Uniform State Law

It seems likely that this question will be answered

by the Commissioners on Uniform State Laws at their annual conference to be held during the latter part of August. This commission, which owes its existence to the American Bar Association, is composed of delegates appointed by the several States for the purpose of promoting uniform legislation throughout the Union. It has already formulated a law of negotiable instruments which has been adopted by more than thirty States. At its last meeting, held August 23, 1905, bills drawn up by the highest legal talent to make uniform the law of sales and the law of warehouse receipts were presented, but after much discussion it was decided to postpone action on the law of sales until the next meeting, for the purpose of further deliberation upon one vitally important provision concerning which the commission was unable to reach an agreement. This provision is embodied in the following section of the proposed bill:

(Attachment or Levy upon Goods for Which a Negotiable Document Has Been Issued.)—If goods are delivered to a bailee by the owner or by a person having capacity to transfer the property in them, and a negotiable document of title is issued for them, and they are thereafter attached by garnishment or otherwise, or are levied upon under an execution, such attachment or levy shall be invalid against one to whom the document has been negotiated for valuable consideration and who purchased it either before such attachment or levy or within ten days after the original issue of the document, in good faith and without notice of the attachment or levy.

A considerable portion of the commission is in favor of striking out the "ten days" clause, as by so doing every shadow would be removed from the title conveyed by this class of negotiable document, and if thus adopted this bill will effect nothing short of a revolution in a field of business embracing the three prime factors of our material development—production, finance and transportation. It will then behoove manufacturers, bankers and railroad officials to use their influence in promoting its enactment into law by the State legislatures throughout the country.

N. A. of M. Convention

Secretary Marshall Cushing, of the National Association of Manufacturers, has issued from No. 170 Broadway, New York, the proceedings of the Association's eleventh annual convention in book form. The meeting of the manufacturers last May was probably the most interesting and important one they ever held, and the proceedings, now printed fully for the first time, will be read profitably.

Secretaries of commercial and public bodies throughout the United States are invited to report their proceedings to FREIGHT. All subjects of general interest relating to freight rates and transportation questions will be published in detail. Communications of this kind should be addressed to Editor FREIGHT, 116 Nassau street, New York city.

Express Companies and the New Rate Law

BY JAMES E. JOHNSTONE

(Continued from the August number of FREIGHT.)

IN considering rates on matter sent by express it will avail nothing to take a large number of rates. All are honeycombed with the same amount of uncertainties, inconsistencies, and show the same want of reason. Let us take up rates from Chicago, and first, more by way of accident than anything else, look at the State of Connecticut.

In the State of Connecticut there are 242 express offices; to 6 of these the rate from Chicago is \$2.75; to 20, \$2.90; to 216, \$3. It is a curious fact that the rate from Chicago to Eagleville, Mansfield, Merrow, South Coventry, Stafford and West Willington should be \$2.75, when all of the places are remarkably small, are reached from Chicago by two express companies and all are located on the Central Vermont Railway. From Chicago, traffic destined to all offices in Connecticut are reached by at least two companies, except New London, Norwich, South Windham, and Willimantic; to these four places one has an election of three express routes, the American, Adams and United States. To the first two the rate is \$3, and to the last two the rate is \$2.90. Rates to Connecticut, from Chicago, are to a degree postage stamp rates. The exceptions are to the six post hamlets located in the eastern part of the State which take rates of \$2.75, and the sixteen places located in various parts of the State which take \$2.90; to all other places the rate is \$3. The rates from New York City to Connecticut points vary from 60 cents to \$1. The rates from New York to the four places which are reached by three originating express routes from Chicago, namely, New London, Norwich, South Windham and Willimantic, are 75 cents to New London, Norwich and to Willimantic by boat (by rail to Willimantic, 90 cents; to South Windham, 90 cents). The rates from New York to the six places which bear the lowest rates from New York, namely, Eagleville, Mansfield, Merrow, South Coventry, Stafford and West Willington, bear the highest rate from New York, namely, \$1. From St. Louis to Connecticut points the highest rate is \$3.50, and this rate applies to the four destinations, New London, Norwich, South Windham and Willimantic. The rates from St. Louis to Eagleville, Mansfield, Merrow, South Coventry, Stafford and West Willington, being the places which take the lowest rates from Chicago, take also the lowest rates from St. Louis, \$3.25, and they are the only places in the State which take these rates.

Westward Rates From Chicago

From St. Paul to Connecticut the rate is \$5 to the greater number of points, but the four preferred places mentioned in the Chicago schedule are also preferred in the St. Paul rates.

While rates from Chicago to Connecticut are to a

very large majority of the places \$3 per 100 pounds, for Massachusetts \$2.50 is about enough.

Having seen some of the east bound rates let us look at the rates westward from Chicago. The companies are different, and perhaps they have reduced express rate making to a science. But they have not. The same happy-go-lucky-get-all-you-can rates are in force.

The rates from Chicago to points in the State of Kansas vary from \$2.50 (Troy, extreme northeastern part of the State) to \$5.25 (Coolidge, extreme western part of the State). The rate from Chicago to Colby, Kan., and one may route out of Chicago over either one or two companies, is \$4.75, but if one's customer should be located in the adjacent county at Goodland, and probably twenty miles further away, and the shipper is compelled to route via one company, the rate is \$4.50. Sharon Springs, Kan., is located about the same distance from Chicago as Goodland, but takes a \$5 rate. If one take the county seats of the western tier of counties in Kansas, all practically the same distance from Chicago, each having only one company, the rates are as follows: St. Francis, \$4.75; Goodland, \$4.50; Sharon Springs, \$5; Tribune, \$5; Syracuse, \$5. Coming East, one-third the distance across the States, the rates to the county seats from Chicago are as follows: Norton (with option of routing via either one of two companies), \$4; Holy City, one company, \$4.25; Wakeeney, one company, \$4.25; Nest City, one company, \$4.50; Jetmore, one company, \$4.50; Dodge City, two companies, \$4.50; Meade, being some forty miles further distant from Chicago than any of the places just mentioned, and only one company, \$4.25. But for this same rate of \$4.25 per 100 pounds one can ship from Chicago to Fort Worth, Tex., but to carry the same 100 pounds of merchandise down to the Rio Grande, to Fort Hancock, Tex., the tariff is \$6.75.

Should three customers visit a dealer in St. Paul, one from Plover, Wis., 199 miles; the second from Walker, Minn., 199 miles, and the third from Ripon Wis., 308 miles, the first will have to pay expressage at the rate of \$1.50; the second will be charged 25 cents more; while the third will be charged the same as the second. The man at Leavenworth, Kan., 540 miles, pays the same rate as the dealer at Pembina, N. Dak., 414 miles, \$2.50 per 100; but if his brother dealer live at Mason, Mo., 409 miles, he will be charged \$3. Rapid City, S. Dak., is 776 miles from St. Paul. It takes a five dollar bill to carry 100 pounds express matter thence from St. Paul. Miles City, Mont., 744 miles, is blessed with a \$4 charge; Wheeling, W. Va., 877 miles, \$3.75, and Suspension Bridge, N. Y., 910 miles, \$4, have Rapid City, S. Dak., handicapped in its swift industrial race.

One can ship from St. Louis to Toledo, Ohio, 436 miles, at the rate of \$2. But if he cares to send into Mason City, Ia., 441 miles, he is charged \$2.75. But the St. Louis dealer's customer at Van Buren, Ark., 410 miles, will be charged \$2.50. To Yankton, S. Dak., 567 miles, from St. Louis, the rate is \$3; Wheeling, W. Va., rejoices with a \$2 rate, being distant 570 miles from St. Louis. Wilmington, N. C., 1,003 miles from St. Louis, pays \$4.50, but Troy, N. Y., 32 miles further distant, pays \$2.75.

From New York to Erie, Pa., 499 miles, the tariff is \$1.50 per 100 pounds; to Raleigh, N. C., 501 miles, the rate is \$2.30 per 100 pounds—less than 100 pounds would be graduated on the \$2.50 basis. Goods traveling from New York to St. Augustine, Fla., 1,017 miles, pay \$4.75 per 100 pounds, but traveling 68 miles more, Rock Island, Ill., \$3.75 is the rate, and for a dollar less than it costs to send to Rock Island, Ill., you can send the same 100 pounds of merchandise to Vincennes, Ind., 942 miles.

Anomalies in Rates

For anomalies, the rate from Chicago to Yewell, Okla. (and to this point one has an option of three companies), is \$4.25; but to Yale, with the same option and 200 miles further distant from Chicago, the rate is \$3.75. One who lives in Guthrie, Okla., can route his express from Chicago over any one of three companies, and pay \$3.75 per 100 pounds. But, if he reside in Kingfisher, Okla., which is practically the same distance from Chicago as Guthrie, and desires something by express, he will pay \$4.25 per 100 pounds.

It should be borne in mind in considering express rates that while these rates are named per 100 pounds there are certain graded charges for packages which do not aggregate that much. These graduated charges are based upon 100 pound charges at 40 cents, 50 cents, 75 cents, \$1, \$1.25, \$1.50, \$1.75, \$2, and then by half dollar jumps to \$5, and then by dollar jumps to \$20. The importance of this may not at first sight appear. But the rule for using these graduated charges is such that on quantities less than 100 pounds and the rate mentioned is not given on the graduated table, one must use for packages weighing less than 100 pounds the next higher rate for making the price. Thus the rate from Chicago to Eagleville, Conn., is \$2.75, but for quantities less than 100 pounds one must pay at the charges which would apply to New London, which takes a \$3 rate. So that wherever the 100 pound rate is not given in the table and the shipment be less than 100 pounds the higher schedule of charges prevails. The rate from Chicago to Los Angeles is \$11.50 per 100 pounds, but on packages less than that quantity the \$12 rate must be paid, because there is no graduated table for the \$11.50 rate.

This table of graduated charges, when one comes to consider the weight of packages, makes a peculiar distinction on packages which weigh less than 7 pounds. Why 7 pounds should be taken as a basis is beyond human comprehension. As before stated, there is no

rate less than 25 cents. To transport 1 pound of merchandise by express you can send it for 25 cents as far as \$4 will carry 100 pounds; for 30 cents, as far as \$14 will carry 100 pounds; for 35 cents, as far as \$18 will carry 100 pounds; for 40 cents, as far as \$20 will carry 100 pounds. It is seen that 50 pounds very properly takes half the 100 pound rate, but if the 100 pound rate is \$2 it requires \$1 to send 25 pounds the same distance. Where the 100 pound rate is \$1.75, 35 pounds up to 50 pounds, cost \$1 to transport; but if the rate is \$4 per 100 pounds, 35 pounds will cost \$1.75; 40 pounds, \$1.85; 45 to 50 pounds, \$2. If the rate is 50 cents per 100 pounds it will cost the same amount to send anywhere between 55 and 100 pounds.

No Reason for Any Express Rate

Express rates bear no relation whatever to any of the economic rules applying to transportation. The rate from Chicago to New Orleans, 912 miles, is \$3.75 per 100 pounds; to New York, the same distance, \$2.50; to Chadron, Neb., 911 miles, \$4.75; to Mobile, Ala., 857 miles, \$4. The rate from Chicago to Afton, Wis., 99 miles, is 75 cents; while from St. Paul to Minnesota City, 96 miles, it is \$1; yet one may send from St. Louis to Paducah, 167 miles, for \$1; but if one happen to send express matter from New York to Plymouth, Mass., he will find that the \$1 will pay for that transportation of 218 miles. If a dealer in Chicago have 100 pounds of express matter to send to Harrisburg, Pa., a distance of 717 miles, the charge will be \$2.25; but if he desire to send the same merchandise to Fayetteville, Ark., 636 miles, the charges will be \$3.75. Speaking in express language, Syracuse, Washington, D. C., and Philadelphia are all the same distance from Chicago, for each take the rate of \$2.25. But Syracuse is 673 miles, Washington, 790 miles, and Philadelphia, 821 miles from Chicago.

It serves no particular purpose to compare all of the express rates in the United States. No schedule or tariff is provided or accessible. The only tariffs which are available, and those only by the exercise of subterfuges, are from the larger cities, for those from the smaller places are either in the heads of the agents or, if printed, but one copy is available and that is pasted in a book which the agent must keep in his office.

It is believed that enough of the examples have been given to show that there is absolutely no reason for any express rate, no rule of thumb or otherwise by which they have been formed. As the express classification is a network of inconsistencies, so the rates are as varying and uncertain as the wind. Did the rates bear some relation to mileage, amount of traffic, frequency of traffic, size of the place or any other element, or a combination of elements, there might be some reason. As it is one has to pay what he is asked irrespective of anything except the welfare of the company.

(This article will be continued in the October number of FREIGHT.)

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W E maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from subscribers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers and carriers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically.

Subscribers who do not receive their copies of **FREIGHT** promptly each month will oblige the publishers by acquainting them with that fact without delay.

W HILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

N o one can fail to see that there has been a change in the policy of the Administration regarding trusts and the railways. With reference to the former, it has been the policy of the Administration to secure a large amount of publicity. If the people, moved by the disclosures, stood behind the executive departments, the trusts were to be closed up by injunctions and other civil remedies. The method largely used to curb the latter has been through publicity brought out by the Interstate Commerce Commission. Combinations of carriers, shipments accomplished by rebates, and various others abuses "must be done away with." The favorite means of accomplishing what the carriers desired was by handing lemons to the small shippers and distributing peaches to the trusts. Heretofore the arm of the civil law has been invoked; mandamus, injunction and similar process has been relied on to effectuate compliance with the law.

A new plan has been forged. Whatever may be the policy of the executive departments regarding the trusts it is nevertheless a fact that the way in which the carriers are to be handled in the future is by means of the criminal law. The corporation is to be indicted and fined; the railway official is to be the subject of the investigation of a Grand Jury and brought before a court to enter his plea and be tried by a jury of his peers; the shipper who accepts rebates is to be put through the same process.

On the line from violation of the law to the penitentiary are three stations. The prosecution is to originate with the Interstate Commerce Commission; it will investigate, ferret out the abuses and send the information along the main line. When it reaches Grand Jury Junction it will be up to that body to find an indictment. At Grand Jury Junction is a branch line connecting with the main stem. This leads from the Department of Commerce and Labor, which, notwithstanding the act creating it interdicts its interference with railways, will send out its corps of investigators and having secured some information, will send it down the branch line to Grand Jury Junction. Here the Master Mechanic of the Department of Justice will inspect the equipment, and if it shall be found to be serviceable, it will be brushed up by the Grand Jury officials and sent forward carded "Quick Dispatch" to Courthouse. There will begin a struggle, and doubtless it will be a war to the knife.

Regardless of the wording of the new rate law, in spite of what its advocates claim for it, it is certain that the Administration has already found some of its defects. It has been seen that the strong arm of

the Government only is capable of bringing about a rectification of transportation abuses. It is appreciated that no shipper can afford to get mixed up in a traffic fight, for financial, business or commercial reasons. It has come to be conceded that the Government and not the citizen must be the paying corrector of abuses. The written law does not permit the Government to bring a civil suit to correct these abuses; it does permit it to bring a criminal action. Hence, as it is "up to" the Government "to make good," it is to do so by a lot of indictments and prosecutions before the courts.

THE press reports state that one of the first matters to which the carriers will direct their attention under the new rate law is the so called initial carrier amendment; that it is proposed to test at once the constitutionality of this provision. It will be recalled

Again the Initial Carrier Amendment that the provision is that when a carrier receives goods for transportation from a point in one State to a point in another, the originating carrier is to be held liable for loss or damage to the property caused by it or by the connecting carriers.

It is difficult to see how a carrier can be a complainant in any proceeding to test this part of the law. As the situation now is, it is rare that a carrier receives goods "for transportation" in interstate commerce. Property is received, "marked, consigned and destined." It is easily seen that no bill of lading now in use comes within the letter of the law. Doubtless the carriers will not provide new forms of bills of lading with wording appropriate to bring the shipment within the law. This makes a shipper or an organization of shippers the plaintiff. The carriers can do nothing. As such they have no standing in the courts.

The next consideration is, where is a proceeding to be started? Perhaps the Interstate Commerce Commission have jurisdiction to determine this matter. Well informed people doubt if they have. The Commission can lay claim only to jurisdiction in the matter of practices "affecting such rates." If the bill of lading is one limiting the liability of all of the carriers handling a particular shipment to loss or damage occasioned by certain specified acts, and the rate is dependent upon what they please to term the kind of service, it is easy to see that the Commission may have jurisdiction in the premises. If, on the contrary, the bill of lading is to limit the liability of the connecting carriers only, or the initial carrier, and no reference is made to the rate, manifestly the practice is not one "affecting such rates." In general the matter is a proper subject for the determination of the United States courts.

Again, it may be asked, How can the matter be raised? Clearly the law provides a penalty for a carrier who does not obey its provisions. But the provision we are now considering is hardly germane to the law. Does the penalty apply? If it does the United States might sue to recover a penalty. The

most expeditious remedy would be by mandamus or injunction brought by a shipper or the Government upon the relation of the shipper.

The provision is, we think, not the clear sailing under fair wind that some believe it to be. First, is it not a trifle inconsistent for a shipper to claim the right to route his freight and thereby designate the agents of the initial carrier and at the same time make the initial carrier liable for the acts of those agents? Again, a carrier, initial, intermediate or final, is chartered as a common carrier between certain specified points; it has its right to exist and do business by virtue of an act of a State Legislature. Can the Federal Congress add to the charter of the carrier and compel it to be a common carrier beyond the geographical termini named in the State charter? Can a common carrier be compelled to do more than transport safely the property intrusted to it to the end of its line and then forward it to the connecting line? The laws of many of the States deny the right of the State Legislature to make a common carrier out of a forwarder; other State decisions hold the contrary.

The Carmack amendment is one of the most important provisions of the new law. It is fraught with great doubts, both on legal and moral grounds. Some consider it constitutional; others differ.

The efficiency of the amendment can be determined only after the courts shall have acted. Many of the questions of the right of Congress to pass laws relating to interstate commerce must arise in a determination of this matter. It is up to the shippers to start a proceeding, and it is up to the courts to decide.

AN innovation has been started by the Interstate Commerce Commission by giving to the public a statement concerning public matters. Heretofore it has not been thought necessary for the Commission to justify its own acts or praise other departments of the Government. Heretofore its opinions in cases, its decisions of fact and its reports to Congress have constituted the public official utterances of the body. It now has become the fashion—if a fashion can be started by one act—to put out a statement. Upon the heels of the statement to which we refer, a Cabinet officer saw fit to do practically the same thing, lauding his own acts.

The statement is concerning the Santa Fé Rebate Case. Its object is to give to the Interstate Commerce Commission the credit of initial investigation and public report, to award praise to the Attorney General and "of course" abundant measure of congratulation to the President. Nor was this all. Another wield of the whitewash brush was spread over the career of Paul Morton, formerly head of the traffic department of the Santa Fé system. This is not the first occasion when the whitewash brush has given Mr. Morton a liberal dose of purifying fluid. On the former occasion the President saw fit to make public correspondence in which Mr. Morton received the imperial seal as the

beaux ideal of the railway world. Mr. Morton was mixed up in the cutting of rates. But every one was doing it. Mr. Morton confessed. But herein scarcely lay the real cause of congratulation. Mr. Morton was of the President's official family, filling the office of Secretary of the Navy.

It is to be hoped that the Commission, when it becomes entangled in the meshes of the new rate law will find other duties than those of assuming to itself the credit of initial investigation and public report, of telling the world how good an Attorney General there is, and tickling the vanity of the President by stating that it was he who was instrumental in carrying out with success the declared purpose of the Administration and enforce the Interstate Commerce Law.

The users of transportation facilities suppose that the Commission occupies its place for the purpose of correcting the existing transportation abuses. They want such of the laws as can be enforced, enforced; they want it enforced against each and every violator. They do not expect that this Government shall pay a quarter of a million dollars per year and have certain people high in authority, either in railroad, political or mercantile life, held up as angels, while others have fitted to them a suit of alternate stripes. If there is any efficiency in the law let its efficiency be shown by an enforcement of it, and not by self-congratulatory statements of the Commission.

WE recently took occasion to compliment the Ohio Shippers' Association and the railways of that State on their agreement relating to demurrage. For about two years there has been an agreement relating to free time, amount of demurrage, and a joint committee for the certification of claims. So far as has been known this agreement was satisfactory to both parties. The shippers might have wished more, but considered it, on the whole, satisfactory to their interests. If it was unsatisfactory to the carriers there was no mention of that fact. But Ohio passed a rate law! Then the carriers, not wishing to let well enough alone, came forward with a proposition to which they well knew the shippers would not assent. Of course, every one knew that the carriers had patched up a poor excuse just to break the agreement and cause the burden of refusing to enter into the agreement for another year to rest upon the shippers. So there has come to an end one of the best, most amicable and worthy agreements relating to demurrage.

But Ohio has a rate law and a commission. The shippers have brought an action relating to demurrage, and case number one was filed before the oaths of the commissioners had gotten cold. The law seems to indicate that there must be ten days' free time. If the shippers win the carriers will be far worse off than under the agreement; if the carriers win they will be

no better off than under the agreement. Whoever wins revenge will rankle in the breasts of the carriers and shippers. Revenge does not increase tonnage, help prosperity, nor originate freight.

THE replies of the carriers to the letter of the Interstate Commerce Commission under the La Follette resolution, concerning grain elevators and the practices of the carriers in that connection furnish excellent examples of complete commercial sanctification. Sublimely holy, they are, if we are to take the replies at their face value. We are to believe they are thoroughly imbued with faith, hope and charity—the requisites of complete holiness. Their faith, however,

**Faith, Hope and Charity—
and the Carriers** is that a soft answer turneth away wrath; their hope, that the future state of rewards and punishments will be far removed from the year of our Lord one thousand nine hundred and six; and their charity, that it is more blessed to give discriminations to favorites than to receive the penalties provided therefor. Behold the holy!

THERE is something ahead for trolley companies doing an interstate as well as those doing an intrastate freight business to think about. We violate no confidence when we state that those trolley companies doing business in two or more States will receive early attention from the Interstate Commerce Commission. Every evil of a discriminatory character attributed to steam railroads has been practiced by many of these trolley lines, and it is an absolute certainty that, regardless of State charter rights, they will be placed under Government regulation.

State railroad commissions also are beginning to appreciate the importance of subjecting trolley companies doing an interurban freight business to the same rules that govern the steam railways. In Georgia the commission at this writing has under consideration the question whether the Atlanta & Marietta Electric Company does not properly come under its jurisdiction. This company carries freight between Atlanta and Marietta. The decision of the commission will be awaited with much interest.

WE wish again to call attention to the series of articles on the express business, begun in the July number of FREIGHT, written by James E. Johnstone. Hardly had the first of the series appeared when the minority stockholders of Wells, Fargo & Co. began to clamor for increased dividends.

When Express Companies Are Regulated The company is capitalized at \$8,000,000 and has a surplus of \$12,000,000; yet only 9 per cent. dividends are paid. The annual report showed that on the surplus only 2½ per cent. was realized, and the minority stockholders wanted to know to

what brokers this \$12,000,000 was loaned, because an impression prevailed that it was in the hands of interests friendly to E. H. Harriman, who dominates the financial policy of the company. They did not obtain the desired information. Nobody except the officials ever knows anything about the affairs of express companies; but it is clearly established that Wells-Fargo & Co. earns from 20 to 30 per cent. per annum, pays 9 per cent. to stockholders, and adds the balance to a surplus which unquestionably is used for stock speculating purposes by favored brokers, who borrow it at an extremely low rate of interest.

Following the Wells-Fargo & Co. episode came action by the minority stockholders of the American Express Company, who demand 12 instead of 8 per cent. dividends, which they have been receiving for a number of years. It is claimed that the assets of the American, which is not an incorporated company, exceed \$31,000,000.

Of course, all this is prima facie evidence that these companies are engaging in business other than the express business, and we look to see little less than a revolution in the methods of conducting these concerns when once the Interstate Commerce Commission has brought them under its supervision. Under the new law they are common carriers and subject to the same general regulations as railroad companies.

Meantime we commend Mr. Johnstone's articles to your notice.

ON the 28th of August, sixty days after its passage, the amendments to the Interstate Commerce Law became effective. These amendments have already been reviewed in FREIGHT.

The expression of any present opinion upon the efficiency of the statutes as thus changed can be of little value. The Commission exercised the authority to prescribe a maximum rate for ten years before the Supreme Court held unanimously that such authority did not exist; and nearly four years elapsed before the Commission was notified by a Federal Court, not only that its decisions possessed no executory force, but that suits to enforce such decisions involved entire new trials in the courts. So, while today the power of the Commission to prescribe a maximum rate seems plainly conferred, and its orders become effective in thirty days, and apparently the carrier, in attacking such an order, must show that it inflicts upon the carrier corporation a measure of substantial injury running along the line of confiscation, no man can tell what, under the straining test of litigation, will be the construction finally placed upon the statute, how far the powers of the Commission will be deemed extended, how far the discretion or judgment of the courts will be held restrained. No judicial decision has as yet defined the bounds of what, under Federal legislation and procedure, does or does not constitute

the taking of a carrier's property without due process of law. For example, under frequent decisions of the courts, the Commission plainly would not be upheld in fixing a rate on grain between Chicago and New York of 5 cents per 100 pounds, the rate now being 17½ cents. That item of traffic represents a large part of railway tonnage, and no one contends that a 5 cent rate would equal the full cost of the service. Now, take an article of minor importance, say chewing gum or perfumery, and let the Commission fix the rate at 25 cents, instead of say 75 cents. That reduced rate would probably cover the cost of service, but might not the courts hold that, fixing the rate at 25 cents when the traffic can well afford to pay 50 or 60 cents or more, is an unreasonable exercise of administrative authority? In other words, that the 25 cent rate is unreasonably low to the carrier, though it may not be confiscatory. If the courts should take that view, a measure of judicial discretion would be developed which might not inconceivably extend to complete review and the announcement of an opinion based merely upon belief which would be contrary to that expressed by the Commission.

Plainly, then, the reconstructed game of Federal regulation has only just commenced. There will be as many assumptions by the carriers in their favor as there will be to the contrary by the shippers, and by the Commission as the administrative body created to preliminarily interpret the statutes, and the Supreme Court will be the final referee.

Meanwhile, the public and the railways will have the experience of much uncontested regulation, and a great deal, a very great deal, will depend upon the ability, and above all the promptitude, of the Commission, for delayed regulation, like hope deferred, maketh the heart sick.

THE FREIGHT PUBLISHING COMPANY offers to the shipping public a book which is invaluable to every person or company having freight relations with railroads. It is the *Freight Claim Index and Record*, prepared by W. R. Campbell, a traffic manager of long experience and of such exceptional ability that he handles all freight matters for one of the largest industrial corporations in the United States. One of the strong features of Mr. Campbell's work is its simplicity. A boy sixteen years old, of average intelligence, can keep the book, and it will be a complete record of every claim filed against a common carrier.

In the *Freight Claim Index and Record* Mr. Campbell makes suggestions which will prove very useful to traffic managers and shippers generally, and purchasers of the book will save each year, in both time and money, many times its price, \$5 a copy.

The *Freight Claim Index and Record* is described on the front inside cover page of this number of FREIGHT.

The Amended Interstate Commerce Law

A New Book Useful to All Shippers

Is President Roosevelt in Doubt About It?

RECENTLY in a published letter addressed to the Republican whip of the House of Representatives, the President lauded the work of the last Congress as well as its predecessor. On the subject of interstate commerce he said:

"The previous Congress, by the enactment of the Elkins law, and by the creation of the Department of Commerce and Labor, including the Bureau of Corporations, had enabled us to make great strides in advance along the path of this bringing the use of wealth in business under the supervision and regulation of the national Government, for in actual practice it has proven a sham and a pretense to say that the several States can thus supervise and regulate it.

"The strides taken by the present Congress have been even longer in the right direction. The enactment of the pure food bill and the passage of the bill which rendered effective the control of the Government over the meat packing industries are really along the same general line as the passage of the Interstate Commerce Law, and are second only to it in importance."

It is thought strange that no direct reference was made to the efficiency of the rate law of 1906. Can it be that the Executive already has doubts of the value of this measure? Is it not to receive the commendation of the Executive after he so ably championed it? Is it of so little value that it will not be enforced? The future only can answer.

IT is quite certain that none of the members of the railway fraternity, certainly none of those who recently called upon the Interstate Commerce Commission, needs any nerve tonic. The nerves of these gentlemen are all right, and what is more they are able to prove it.

No Nerveless Gentlemen Are These

Recently a coterie of sweet smiling railway officials presented themselves at the doors of the Commission and requested that the Commissioners exercise their "discretion" under the act in just three little particulars. Mere trifles, you know, but they are essential. First, that the time for filing the revised and simplified schedules be extended; second, non-publication and non-filing of export rates, and third, that export rates may be changed in less time than provided by the act.

So here's the rub, is it? In the face of a continuous violation of a statute for years the carriers now want to have the Commission repeal about all that is of any value in the new law. Of course, this raises the old question, whether or not the Commission is a branch of the Federal Congress, to which the representatives of the people have given up their powers. Manifestly the Commission thought not; for it in effect postponed its decision until a case is brought and refused to decide a hypothetical question. In this it assumed the position of the judiciary. But the carriers had their nerve with them.

The incident goes to show the extremes to which

the transportation agencies will go. Shades of Captain Kidd! A few more little requests of this kind will effectually wrinkle the Raglans, dent the tiles and fray the trousers of the shippers. They have been proper subjects for the "ole clo'" man for some time.

HAVING told us to avoid race suicide, fixed our railroad rates, purified our food, revised our football rules, and, having prescribed for our welfare many other things, Mr. Roosevelt now forces upon us a new form of spelling. Phonetically, our President is a bute.

THE Canadian Railway Act of 1903 provides the extent to which carriers may limit their liability for loss and damage. The matter is largely left to the Board of Railway Commissioners and it may be brought to their attention by any one aggrieved. Section 275 of the act reads: "No contract, condition, by-law, regulation, declaration, or notice made or given by the company impairing, restricting or limiting its liability in respect of the carriage of any traffic, shall relieve the company from such liability, except as hereinafter provided, unless such class of contract, condition, by-law, regulation, declaration or notice shall have been first authorized or approved by order or regulation of the Board" (of Railway Commissioners).

MR. BAER, of the Reading, is back. He says he doesn't know what the new rate law means. Mr. Baer is in good company; but for a long time we have considered him an Act of Providence and admit that we are astonished when we learn that there is anything he doesn't know.

Iowa Intrastate Commerce

To the Editor of Freight:

SIR—Can you give me the decision of the Iowa Supreme Court in the case of Garvik v. Burlington, C. R. & N. Ry. Co.? I understand it was handed down last July, and has an important bearing on the intrastate commerce of Col. W. P. Hepburn's commonwealth.

Yours truly,

D. E. S. MOINES.

NEW YORK, August 23, 1906.

While we have this decision we regret that lack of space and other considerations prevent us from printing it. The Iowa Supreme Court reduced the award of the lower court to the plaintiff from \$8,000 to \$3,000, contingent upon the acceptance of the smaller sum within thirty days from July 12, 1906.

Casually we may observe that the introduction of what may be apologetically termed the "Iowa idea" in cases of this kind is a form of railroad regulation which hitherto has wholly escaped the attention of our Chief Executive and Congress. Had the case been tried under the Carmack amendment, which makes the initial carrier responsible for loss or damage, we could readily understand the verdict. The Safety Appliance Act would also seem to cover the case, the carrier's contributory negligence in the premises being established beyond reasonable doubt. But, as neither of these laws was enacted at the time of the collision, nor had the President's race suicide edict then been issued, we confess to considerable perplexity in describing the process of reasoning under which the jury and lower court reached their conclusions. We have no opinion to offer concerning the testimony of Mr. and Mrs. Dye.

Demurrage Complaints of the Ohio Shippers

THE Ohio Shippers' Association has filed with the State Railroad Commission complaints against fifty-two Ohio railroads regarding the supply of cars and the requirement that cars must be loaded and unloaded within forty-eight hours after they have been placed on the siding.

The complaint regarding the supply of cars relates to alleged discrimination in the furnishing of cars to the larger shippers and against the smaller ones.

Shippers say it is simply impossible at all times to load and unload cars within the short period of forty-eight hours, and they want this matter as well as the other remedied by the commission.

At the last meeting of the Association in Columbus John R. Flotron, of Dayton, was elected president to succeed W. A. Thomas, of Niles, who resigned because of the pressure upon his time of private business. J. V. O'Brien, of Cleveland, was elected to succeed Mr. Flotron on the executive committee. E. E. Williamson, of Cincinnati, succeeds O. P. Gothlin as chairman of the joint conference committee. Mr. Gothlin, who has been appointed on the new State Railway Commission, also gives up a place on the executive committee of the association, where he is succeeded by A. C. Wampler, of Dayton.

In a circular issued by Secretary J. W. McCord to members, the story of the disagreement with the railroads is told as follows:

We beg to advise you of the status of our present agreement with the railroads of Ohio, and of the existing conditions under the new Uniform Car Service Rules recently promulgated by all of the Car Service Associations of the State.

Our agreement with the railroads of Ohio, entered into July 14, 1905, for the term expiring July 1, 1906, was first considered for renewal in Joint Conference Committee on June 15, 1906. At that meeting the committee from the railroads presented their instructions as given them by the Ohio Railroad Association, in the form of a resolution, adopted by their Association, at a meeting held at Columbus on July 1, 1906, reading as follows:

"Resolved, That the committee be instructed to say to the Conference Committee of the Ohio Shippers' Association, that they are prepared to continue the agreement so far as it relates to operation and details of car service organizations, but that all reference to time limits in this agreement be stricken out; that each car service association shall take up for itself the question of its own rules, and make such rules as seem right and proper."

Our committee refused to agree to the elimination of Rule Four of our agreement, as implied by this resolution, and submitted the terms of a new agreement, which were practically refused by the railroad committee.

After agreeing to extend the terms of the old agreement to August 1, 1906, the Joint Committee adjourned for further negotiations at a future date.

On July 11, 1906, the Joint Committee again met. The committee from the railroads stated that they were instructed to refuse acceptance of the new agreement, as offered by our committee at the meeting held June 14, 1906, and further stated that they could only enter into a new agreement in conformity with the resolution above referred to, which in effect eliminated Rule Four of the old agreement.

After a unanimous agreement in Joint Committee that this Association, or any member thereof, would not be considered as acting in bad faith should we go before the courts or the Railroad Commission for a construction of whether or not forty-eight hours flat free time for car service is proper, the committee voted to continue the Joint Railroad Committee and renew for one year, ending August 1, 1907, all the rules of the old agreement with the exception of Rule Four, which rule provides for ninety-six hours free time for the unloading of bituminous coal, coke, fruit and vegetables, and seventy-two hours for lumber when in closed cars.

The New Uniform Car Service Rules, as adopted uniformly all over the State by all the railroads of Ohio, under the administration of their five Car Service Associations (Columbus, Toledo, Cincinnati, Cleveland and Pittsburgh), providing for only a flat forty-eight hour free time allowance on all commodities, are now sought to be enforced, very greatly to the detriment of receivers of coal, coke, fruits, vegetables and lumber.

In other respects the new rules are more liberal to the public than the old ones, in that they provide for only one placement, 7 a. m., instead of two placements, 7 a. m. and 12 m., afforded under the old rules.

On July 24 the Executive Committee of this Association held a special meeting for the purpose of deciding on definite action to be taken in the matter. At that meeting the attorney for the Association, John R. Horst, presented a full brief of the legal status of the Car Service proposition. The committee appointed a sub-committee—consisting of E. W. Seeds, E. E. Williamson and J. W. McCord—to take such action as might be deemed proper by counsel and the committee.

On the 1st inst., immediately after the Railroad Commission of Ohio had been legally qualified and organized, this Association, through its attorneys, John R. Horst and L. D. Lilly, filed a formal complaint against fifty-two railroads of Ohio, setting forth, first, that Rule 1 (a) of the Uniform Car Service Rules (the forty-eight hour free time rule) is contrary to the statutes of Ohio; and further, that said free time of forty-eight hours for loading and unloading is unreasonable and contrary to law, in that the same is insufficient for loading or unloading all cars, without regard to the capacity of the same, or the commodity with which the same are loaded, or the condition of the weather at the time of loading or unloading.

The Association also prays that the defendants be notified of the pendency of the complaint; that the said named Car Service Rules be modified to conform to the statutes in such cases made and provided; and that reasonable free Car Service Rules for loading and unloading all commodities be established and enforced, and for all relief to which complainants may be entitled. When the case comes up for hearing it will be necessary for us to present the strongest evidence that can be secured to establish the unreasonableness of the new forty-eight hour rule, and we rely on our members engaged in the coal, fruit, vegetable and lumber trades to support us with reliable evidence.

The statute referred to as being violated is Section 3227, Revised Statutes of Ohio.

As to the payment of Car Service bills, we advise you to govern your action as follows:

Refuse absolutely and positively to pay, when the bills presented are in violation of Rule 1—a, b, c and d of our railroad agreement (see the copy of agreement on yellow slip sent you some time since). Also, if the bill presented for payment involves the commodities formerly protected under Rule Four of our old agreement, you can, if thought best in your judgment, pay the same, indorsing in presence of the

party to whom you make payment, the words "Paid under protest," across the face of the bill.

Section 3227, Revised Statutes of Ohio, provides that railroad companies, after the expiration of ten days from the receipt of the goods at the place to which they are consigned, may, after giving notice of the ar-

rival and after the expiration of ten days, charge a fair and reasonable cost for storage, which shall be a lien upon the goods. The position of the Ohio Shippers' Association is that this statute requires ten days' free time.

Request of American Shippers' Association

WASHINGTON, D. C., August 28, 1906.

The Executive Committee of the American Shippers' Association called upon the Interstate Commerce Commission today and discussed with them what action ought to be taken by them in the performance of their discretionary duties. Among those present were: W. B. Conkey, president, Chicago; Chas. H. Deere, Moline, Ill., first vice president; L. A. Clark, Muncie, Ind., second vice president; John M. Glenn, Chicago, secretary; A. J. Toomey, of New York; F. T. Bentley, of Chicago; W. L. Wampler, of Dayton, Ohio; Jas. B. Connally, of Pittsburg, Pa.; O. F. Bell, of Chicago, and J. A. Henderson, of New York.

The conference was for the purpose of suggesting to the Commission that, under its discretionary powers, the law might be enforced so strictly as to work a hardship on the shippers as well as the carriers. It was urged that the law ought to receive an interpretation in harmony with existing commercial conditions and in a way such as to further and not hamper progress.

Resolutions embodying the ideas of the association were presented. They were as follows:

Posting Tariffs

Whereas, The literal posting of two copies of all tariffs in the stations of railroad companies, if literally carried out, is not of much practical benefit to the public, and is an expense and hardship on the carriers; therefore, be it

Resolved, That we favor the continuance by the railways of their present practice of having the tariffs in the custody of the agent, with a placard posted in the waiting room to the effect that they are open to the inspection of the public on application.

Changes in Tariffs

Whereas, There seems to be a difference in interpretation of Section 6 with regard to the plain issuance of tariffs; therefore, be it

Resolved, That we should favor the practice that only one amendment, advance notice or supplement to a tariff shall be in effect at one time, and when necessary to issue a later amendment, the last amendment shall include all the live changes up to date.

Modification of the Thirty Days' Notice to Change Tariffs

Whereas, The law provides that a carrier cannot accept and transport goods unless it has a published legal rate in effect, and also that this rate must be printed and filed for thirty days before it becomes legal, and believing this to be a hardship on both the carload commodity shippers, and export shippers in particular; therefore, be it

Resolved, That we favor the Commission ruling that reduction in domestic rates can be made effective on ten days'

notice, and where business ordinarily moves on commodity rates, and there are no rates in effect except the class rates, which are much higher and not intended to apply, and the carrier would not apply them had they time to publish a commodity rate, that such carrier be permitted to telegraph or write the Commission, stating the rate desired to be put in effect, and have same become effective at once; and on export business allow three days' legal notice for any reduction on same.

One Road Adopting Another's Tariff as Its Own

Whereas, The law provides that a railroad agent must not accept freight for shipment over his line unless there is a published tariff rate; and,

Whereas, Under present methods of through billing, the majority of agents have no knowledge whatever of the rates on which property is transported; and,

Whereas, It frequently occurs that there may be a tariff rate between two common points which is not in effect by a competitive line; and,

Whereas, Many shippers are located locally on one line; therefore, be it

Resolved, That we favor the Commission ruling that a line having no such published tariff rate, or carrying a higher published tariff rate than its competitors' publication, should be permitted to accept and forward business upon telegraphing the Commission the facts and stating that they adopt such competitor's rate as their own, same to become effective at once; and further

Resolved, If one road with a higher tariff, after having accepted the business, should attempt to collect such higher rate as against its competitor's lower rate, it shall be compelled to transport at its competitor's lower rate to prevent discrimination.

Terminal Charges

Whereas, The law provides that all terminal charges, etc., must be stated separately on the tariff schedules; and,

Whereas, The literal compliance with this ruling is almost an impossibility, and in any event will mean such a multiplication of terminal switching tariffs that it will be impossible to handle same intelligently, and under this condition the railways will probably get around it by refusing to absorb any terminal charges, and make their rates apply only from their own rails, which would mean more revenue to them and a hardship to the shipping public; therefore, be it

Resolved, That we should favor the railways adopting a switching tariff at each competitive point, and being allowed to make a notation on their tariff schedules to the effect that the switching terminal charges at point of shipment and destination are subject to the rules of said local switching tariffs at both points; otherwise, we see no other recourse than to favor the absorption of any terminal disabilities at both ends on any particular shipment, which means practically free delivery from private sidetrack to private sidetrack.

Railways Quoting Rates

Whereas, The railway companies now claim by posting their tariffs in the stations they are fulfilling the requirements

of the law as regards imparting a knowledge of the rates to the public, and therefore may refuse to quote rates to the public except as agents for the applicant and assuming no responsibility therefor; and,

Whereas, The law distinctly demands that no greater, less or different charge be collected than that shown in the published tariff rate; therefore, be it

Resolved, That some means should be devised to make a railway company quote rates to the public, and be responsible therefor, even though they make an error in so quoting.

Application of Tariffs

Whereas, Many tariffs are issued which apply not only from a specific point, but also from a territory described within certain boundaries, and also, in making joint rates, work with a number of connecting lines and terminal roads; therefore, be it

Resolved, That we should favor a ruling from the Commission that an application sheet showing such territory or such railroad connections are parties to the rate from the particular terminal should be considered legal and sufficient.

Sums of Locals

Whereas, Some railways have taken the position that the only legal tariff under the law is the through rate, regardless of the fact that it may be much higher than the sum of two legally published and filed tariff rates applying on some intermediate point; and,

Whereas, The Commission in the Hilton Lumber case, decided in April, 1901, ruled that under such circumstances a through higher published tariff rate was illegal to the extent that it was higher than the sum of the locals; therefore, be it

Resolved, That we should insist that the railway companies recognize that the sum of locals is the only legal rate, when such sum is lower than a higher published through rate.

Weighing En Route

Whereas, It is a common practice for railways to weigh a car en route more than once, and each traffic territory insists that the weight obtained under its jurisdiction is the only correct weight, leading to complication with shipper and receiver, and confusing the question of what is the correct weight, and also causes them to vary in the collection of their freight charges from the correct amount; therefore, be it

Resolved, That if a car has been weighed both loaded and light once, same should govern to destination, except in case of manifest error; this to be regardless of whether weighed en route or at receiving point.

Correct Collection of Freight Charges

Whereas, The law provides that a railway company may

not collect, charge, demand or receive a greater or less freight charge than that shown on the legal tariff; therefore, be it

Resolved, That the shippers should insist upon the railway agents rendering correct bills, and refuse to pay same unless they are properly rendered.

Long and Short Haul

Whereas, It has become a common practice of railway companies to disregard the long and short haul provision of the law, claiming that they are relieved of same, either by operation of water competition or some dissimilar conditions or causes; and,

Whereas, The public have no means of telling from railway tariffs as published whether or not these rates apply as terminals only, or should apply as maximums to intermediate points; therefore, be it

Resolved, That we should favor ruling that every freight tariff which does not specifically specify and explain that it is a terminal rate only, should be considered by the Commission as a maximum to all intermediate points, and furthermore, that this practice should be reduced to a minimum and notice to the public should be given in some public manner that the carrier has been relieved of the obligations of the long and short haul clause so claimed by transportation lines.

Import Rates

Whereas, It is the practice of some lines making import rates, on commodities competitive with domestic productions, less than the rates from the port of entry; therefore, be it

Resolved, That such practice is discriminatory and that the lowest basis from any foreign port to inland destination should not be lower than the domestic rate from the most favorably located port of entry, all lines being allowed to equalize the combination of ocean and inland rate, provided that in no case should any through import rate be less than the export rate in the opposite direction between the same points.

Bill of Lading

Resolved, That we favor the adoption by all shippers of a simple form of freight receipt or bill of lading without any conditions such as are now embodied in the bills of lading in use by the various railroads throughout the country, such form of bill of lading to be acknowledgment that the carrier has received the goods for transportation, the statute and common law to govern the transportation, and that the Interstate Commerce Commission be requested to issue a ruling that the present form of bills of lading in use by the various roads which are in conflict with both the common and statute law are illegal and that their use and acceptance should not be forced upon the shippers.

I. C. Commission Listens, but Doesn't Act

WASHINGTON, D. C., August 28, 1906.

After a protracted session today, at which the Interstate Commerce Commission heard several representatives of railroads and a committee of the American Shippers' Association (mentioned in another article), the position of the Commission was stated as follows:

Railroads and shippers must take advice of their counsel and obey the law as construed by their attorneys. Opinions are to be given by the Commission only in specific cases after full hearings and in the ordinary procedure provided by the law. Rulings in advance on hypothetical cases will not be made.

Intimations were given to the carriers that no proceedings will be instituted against any of the roads for failure to immediately comply with the provisions regulating the submission of tariffs without first giving reasonable notice.

Summarized the requests of the railroad men were: They do not want any change in the provision requiring thirty days' notice of a change of rates when applied to export and import rates. In this the trunk lines antagonize the Southern and Western roads, their reason being that rates from the seaboard are now pretty well fixed.

All the roads want additional time, not less than

thirty days, and more if they can get it, to complete the preparation and filing of the tariffs required by the new law.

They want the provision annulled requiring the posting of two copies of all tariff sheets, and a substitute adopted providing that a notice that rates can be consulted or seen on application.

They want the Interstate Commerce Commission to make a classification of industrial roads, so that in the arrangement of joint rates nothing more than a reasonable and just compensation shall be allowed them. They ask that in all joint rates in which two or more carriers are interested there shall be concurrent action on the part of all such roads.

The commissioners listened to speeches by B. D. Caldwell, vice president of the Lackawanna; George V. Massey, general solicitor of the Pennsylvania; G. J. Grammer, of the Vanderbilt system, and F. B. Bentley, representing the American Shippers' Association.

Mr. Caldwell asked for an extension of time for filing rate sheets, asked that the present manner of publishing the rates, by putting up a notice telling the public where to find the rate sheets, be continued; demanded regulations for the publication of import and export rates, which heretofore have been secret and not subject to the rulings of the Commission, and pointed out that unless rules governing the making of joint rates be put out immediately there will be juggling with them, to the detriment of railroads honestly endeavoring to live up to the law.

Mr. Massey, of the Pennsylvania, assured the Commission that reports that his system is preparing to fight the law are untrue. He said the Pennsylvania is going to do its best to live up to the law.

Only five of the commissioners were present—Messrs. Knapp (chairman), Clements, Cockrell, Lane and Clark.

"GREATER WASHINGTON"

The "Greater Washington" movement, which is being pushed by the Jobbers' & Shippers' Association of that city, is making fine progress.

Reports of the Freight and Publicity committees will probably be made within a few days, and the necessary funds raised to conduct an active campaign. Concerning the freight situation, the sub-committee, consisting of E. H. Droop, L. H. Herrell and Charles W. Semmes, state that an agreement has already been reached with W. W. Bowie, representing several railroads, which provides:

1. Freight for the South is to be billed through to its destination.
2. Freight trains for the South are no longer to be held until freight trains for the North have passed.
3. Freight for the South is to be handled from the yards at Rosslyn and Four-Mile Run, and not by indirect transfers from Benning and Anacostia.

This concession is one of much importance; but there is other work to be done. Vice President Ross P. Andrews says:

"In Washington, the Southern and the Chesapeake & Ohio, as well as other roads, have a passenger arrangement with the Pennsylvania whereby these roads use the passenger terminal in this city, but none of these roads has a freight terminal here.

"The Southern Railway has no freight agent in this city, and the consequence is that all shipments over the Southern are made originally over the lines of the Washington Southern or Philadelphia, Baltimore & Washington. When we want to find out why a shipment has failed to arrive on time, we have to make inquiry originally of the Philadelphia, Baltimore & Washington's agent in Washington. I assume he sends it on to the officers of the Southern. This is a circuitous method of doing business, that is neither effectual nor satisfactory.

"It stands to reason that the employees of one company will not take as much interest in shipments over another line as in shipments over their own line. That they do not take such interest is evidenced by the delays that are constantly occurring. I intend to bring this matter up at the next meeting of the Jobbers' & Shippers' Association.

"What we need in the way of freight facilities for Washington, quite as urgently as we need anything else, are separate freight depots of the railways traversing the South, within the city limits. In my opinion, such depots would do more than any other one thing to assure rapid and trustworthy handling of freight shipments."

It is considered probable that the association will initiate as a permanent feature of the Greater Washington movement a period each year to be known as "Merchants' Week." This plan has been followed by Baltimore with marked success, it is said. Six days are devoted to country and village merchants from Maryland, Virginia and West Virginia, who are invited to come to the city as the guests of the commercial men. The visitors are entertained and incidentally place large orders for goods with the city houses.

S. O. INDICTMENTS

Two Federal Grand Juries in Chicago, on August 27, returned ten indictments against the Standard Oil Company, charging violation of the Elkins Law. No railroads were indicted, although they were mentioned in connection with granting rebates.

If the Standard should be found guilty on all of the counts, the total fines which may be imposed would amount to \$125,500,000.

Each of the 6,428 counts covers a separate offense and is based on a tank car shipment averaging about twenty-five tons from the Whiting, Ind., refineries.

The Burlington and the Alton had published rates of 18 cents a hundred pounds to East St. Louis and 19½ cents to St. Louis, but they carried oil for the Standard on a secret rate of 6 and 7½ cents to those points.

Concerning the Long and Short Haul Clause

BY GEORGE E. WEST

THE popular understanding of the so called long and short haul clause of the Interstate Commerce Act is, it is believed, far different from what that clause really is, or is by virtue of the numerous decisions of the courts upon it. It is not infrequent that one hears comparisons of mileage and rates upon the lines of different carriers. Those better informed consider that the short haul must be included within the longer; that in no case must the charge for the shorter haul exceed the charge for the longer, and, in fact, that it must be less. If there be a portion of the statute which the public think has been emasculated by the courts, it is certainly the Fourth Section.

During the last Congress, as in the preceding ones, several attempts were made to change the phraseology of this portion of the law. By reason of the rule under which the bill was before the House (as reported by the committee) it was necessarily passed verbatim. Thus no change was made in the long and short haul provision.

Hopelessly Uncertain

The general feeling of one who goes through the numerous court decisions on this branch of the subject is that it is now in a state of hopeless uncertainty; that it is of no value whatever, and that the discriminations practiced by the carriers against places less distant from the point of origin are legion. The people of any city which is geographically located on the line to a large city, are constantly complaining that they are charged as much if not more freight than is paid to a considerable distance farther. The chief complaints have been made by places striving to compete with a larger place more distant from a given place of origin or destination. Denver complains that the transcontinental rates to that city are more than the rates to San Francisco. Danville objects to the relation of rates prevailing to it and to Lynchburg. The number of complaints is very large and the number of court cases is large.

In order to learn just what the provision is, it should be carefully read. Section 4 provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great a compensation for a shorter as for a longer distance: Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less

for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

Before considering the decisions of the courts upon this law, it should be remarked that, from the time when railroads first began to be constructed, or rather, when they first began to make rates for the transportation of passengers and property, it has been the custom to favor particular localities. This was notably true of the terminals; where a railroad had its terminal, there it proposed to build up a commercial city, and the carrier contributed to this by the less rate which it made to that point. It was formerly, and indeed now, within the power of a carrier to make or break a town. So intimately connected with the transportation of commodities is our commercial life that if one place receive a discriminating rate, the place which has to pay more can figure that the advantages of dairy farming in its streets are more profitable than commercialism. Complaints of such practices have existed from their incipency. Often they were well founded, yet often it was a fancy of the mind due to home enterprise. Connected with this has been the belief that it has been the custom of carriers to charge more to the interior points, for the purpose of making up the loss on the longer hauls to the exterior points. Whether or not this belief is warranted rests upon what is the cost of moving traffic. No one seems to know; and no one dares hazard a guess and then stand a cross examination upon it. It is frequently claimed by the representatives of the carriers that there is great profit in the long haul; that the relative cost of operation per mile diminishes rapidly with the increase of the haul. That there is great force in this contention cannot be doubted, but that the relative less cost of transportation per mile decreases as rapidly as is often stated cannot be believed. The theory is the direct opposite of a theory of street railway transportation, for there it is claimed the profit is in the fares of those who ride a short distance. It is also urged that the volume of traffic which is destined to the terminal is such as to lessen the cost. This is not of doubtful value; but when considered it should always be kept in mind that a portion at least, and often a large portion, of the volume of traffic is the direct result of the low rates.

Specific Legislation

The Interstate Commerce Law was, as is well known, modeled upon the English legislation upon the subject. It should be noted that the British Parliament did not include within its acts any wording similar to the long and short haul clause of our law. The construction which has been placed upon the term

"undue preference" in England has, however, been such that by the decisions of the English courts the judge-made law for Great Britain in this respect is quite akin to ours. Our law of long and short haul is the result of specific legislation and the interpretation of the courts; in England the long and short haul law is by virtue of the prohibition of "undue preference" to localities and the interpretation of the courts.

Probably it will expedite the consideration of the clause if one first take the decisions relating to the proviso. A casual reading of it might lead one to infer that before the carrier desiring to charge for an interior point as much or more than to one farther distant, it must apply to the Commission for permission to do so. But, if the proviso be read in connection with the entire section, it is clear that the carrier may name such a rate without making an application. If, however, the carrier do so, he must be relying upon the fact that the circumstances and conditions are such that they are not within the statute, viz., that they are essentially dissimilar. If the carrier, having determined in its own mind that the circumstances and conditions are essentially dissimilar, choose to name a higher rate to Denver on transcontinental traffic than to San Francisco, it need not apply to the Commission before putting such rates in effect. Having made such a schedule of rates, it does so at its own risk, and if, in a proceeding brought thereafter, it appear that the circumstances and conditions are essentially similar—as to bring the case within the provisions of the section—the carrier has violated the law. In short, the carrier in so acting acts at its own peril. Such is the weight of authority, but there are cases which hold that the carrier must, before it makes rates in apparent violation of the section, secure the consent of the Commission. These cases are, however, disapproved or overruled by the cases first considered.

If the carrier apply to the Commission, in accordance with the proviso, and show or attempt to show that the circumstances and conditions are essentially dissimilar, but the Commission be of the opinion that they are such as fall within the wording of the section and deny the permission asked, it is not unlawful for the carrier to make a greater charge for the shorter than the long haul. Thus if, upon application to the Commission, it should determine with respect to particular traffic that the transcontinental rate to Denver should not exceed the transcontinental rate to San Francisco, and make an order prohibiting such a charge, the carrier does not violate the law if, in a court proceeding, it be determined that the circumstances and conditions of the traffic on the particular commodity to Denver are essentially dissimilar to the traffic to San Francisco.

If the traffic moves under such circumstances and conditions that it may be said that in each instance they are essentially similar, the carrier is under a duty to obtain relief, if it can, by application to the Commission. If the carrier does not secure the permission

to make such a relation of charges as it desires under such a state of facts, it has violated the law.

It will be noted that the section provides for charges over the same "line." This is not synonymous with the term "carrier," nor with the term "railroad." Each of two carriers may use the same tracks, but they would be distinct "lines."

One carrier may lease tracks of another, and under such circumstances it was held that the joint use of tracks did not create the same "line," and, further, that the law did not compel either company to make its tariff with respect to that of the other company.

Circumstances and Conditions

A careful reading of the section will dispel one error into which the public has fallen. It is often supposed that the prohibition is to the effect that the tariff must be graded, that the charge to the interior point must be less than to the more distant one. It is clear, however, that the prohibition is to the effect that the charge to the nearer place shall not be more than to the more distant place. Thus, if the circumstances and conditions be essentially similar, the law is not violated if the charge to the nearer place be the same as the charge to the more distant one. It is true that other sections of the statute may be violated by such action, but there is no violation of Section 4 in such an arrangement of rates. Under such decisions the making of "group rates"—rates of the same amount to a considerable territory—are permitted under this part of the law.

So, also, the rate between two local points on a line may be more than the joint through rate for a longer haul, a portion of which is the road connecting the two local points. Also a joint through rate may be less than the sum of the two local rates, or, in fact, less than the local rate of either of the carriers, which constitute the joint line. On the contrary, however, two or more carriers cannot, without violating this section, make a joint through rate from one point to another point which is less than a joint rate to an intermediate point. In short, there is, in considering joint rates, no relation between joint rates and local rates, as far as the violation of this section is concerned; the one is no gauge for the other, except in so far as it may tend to show the reasonableness of a charge. Because a local rate is more or less than the joint through rate, or because the joint through rate is more or less than the local rate or the sum of locals, does not bring a carrier into forcing such rates within this section of the law.

That portion of the section which has received the greatest amount of interpretation, these words which have been most often overlooked by the public, the phraseology which has been the cause of much contention, is "under substantially similar circumstances and conditions." These words contain the core of the whole matter. Around them circles all of the complaints. Under them the carriers have found a shield to protect their rates. Ordinarily one would not place

much weight on these words. True, they mark out the line which authorizes the carrier to make such rates as he desires.

If the traffic moves "under substantially similar circumstances and conditions," the carrier is prohibited to charge more for the less than the greater haul. By the wording of the section it is clear to see that whenever a case falls within this description, it brings into play the law. If the case is such that the "circumstances and conditions" are not substantially similar, the carrier is at liberty to make such rates, practically, as it may see fit. Such is clear where there is no doubt that the circumstances and conditions are essentially dissimilar.

A serious question, however, arises where there is but a slight dissimilarity. It is difficult to secure two cases which are identical. It is more difficult to say to just what extent, to what degree, the circumstances and conditions must be dissimilar in order to permit the charges provided by a tariff; so, also, it is difficult to say when two set of circumstances and conditions are so closely similar that this section shall apply. The weight of authority is that the circumstances and conditions must be substantially dissimilar. What can be considered "substantial" in this behalf is very doubtful. It does not admit of accurate definition, but rests largely in the discretion of the court. What one would consider substantially dissimilar, another would consider substantially similar. As it is, each case must stand upon its own premise. No general rule can be laid down.

What Is to Be the Difference?

Another question also may arise. Given a case where the circumstances and conditions are essentially dissimilar, substantially dissimilar, what is to be the difference in rate? Shall it be in proportion to the dissimilarity? Manifestly so; but where is the line by which this is to be gauged? Suppose the circumstances and conditions are only slightly dissimilar, must the relation of rates be different than if the circumstances and conditions be essentially dissimilar? What, in short, is the relation of the degree of dissimilarity to the two rates provided by the tariff? These questions lead to the prohibitions involved in other portions of the statute, are not easy of reply and must in each case as they arise receive a reply applicable to that case, and frequently to that case alone. The similarity or dissimilarity of circumstances and conditions has been held to be a question of fact and not of law; a question for the consideration more of good business policy than of legal learning.

Whenever a carrier claims to be relieved from the operation of this section, it claims that the circumstances and conditions are "substantially dissimilar." The reasons alleged why the circumstances and conditions are dissimilar are not particularly numerous, but are often spread out to great length. In truth, the one thing which the carrier puts up as a defense for its action is competition. It claims to be under the neces-

sity of making a less rate for the long haul because it is driven to it by reason of competition. Competition is, in their defense, the all pervading influence. While not wishing to cast any reflection upon the carriers who are fond of putting up this defense, it is nevertheless safe to say that the competition between carriers today is of little or no potentiality. It is too well known a fact that rates are almost exclusively "agreed rates" for any one to seriously talk about the competition between carriers. But other kinds of competition are urged.

The competition to which the carrier addresses itself, and through which it hopes to be relieved, and by which it is more frequently relieved, are: Competition of carriers subject to the Act to Regulate Commerce; competition of a carrier not subject to the act; competition of markets; and competition, unnamed and undescribed. The last kind of competition is brought into the limelight upon any and all occasions when the former kinds or other defenses will not suffice. Competition is never urged as a defense when, in a comparison of the circumstances and conditions of two cases, they are so dissimilar as to account for the rates; volume of traffic may suffice; regularity of movement may avail. If these are sufficient, competition is held in reserve; otherwise it is brought forward.

The competition which is said to exist between rival carriers subject to the Act to Regulate Commerce has in a very large majority of the decided cases permitted the carrier to assume that there is a substantial dissimilarity of circumstances and conditions. So, also, where a carrier subject to the act comes in competition with one not subject to the act—a rail carrier in competition with a water carrier—the former is permitted to violate the section, for the reason that this competition is said to bring about a substantial dissimilarity of circumstances and conditions.

Judge Taft's Opinion

That competition will create, if existing, circumstances and conditions dissimilar there is no doubt. The question is, How much competition must there be? No one denies that competition may reduce rates. It is a question whether or not in a particular case it does. It would seem that the competition should be bona fide, active, forceful and potential. The courts agree that it must be potential, but are not of one mind on what constitutes potential competition. It is manifest that if a carrier plead water competition by a river which is not navigable, it ought not to prevail; so, if one plead the competition of a carrier which it owns or controls; so, if, in considering a particular traffic—one which cannot be transported by water—if water competition be pleaded. Probably the best judicial writing upon the subject of competition is to be found in the opinion of Judge Taft in the East Tennessee case. On the bench sat Mr. Justice Harlan, who concurred in the opinion written by Judge Taft. The opinion reads, in part:

"It is contended on behalf of the defendants that

the circumstances and conditions of their Nashville business are not similar to those of their Chattanooga business, in that at Nashville they encounter competition which they must meet by lowering their rates in order to secure any business at all, while at Chattanooga such competition does not exist. This competition is said to be of two kinds:

"First, the potential, but not actual, competition afforded by the situation of Nashville on the Cumberland River, by which it may be reached nine months in the year by steamboat from Evansville and Cincinnati. This gives Nashville water communication with points on the East and West trunk lines, whose rates are $33\frac{1}{2}$ per cent. less than the Southern rates, and thus, it is said, makes it practically a trunk-line point. The evidence does not sustain the claim that in respect to through rates from New York to Nashville via Ohio River points the river competition has any effect whatever. The witnesses for the defendants admit that no through freight from New York to Nashville is ever carried by the Ohio and Cumberland Rivers; and this although the rates by river are from 20 to 25 per cent. less than the proportion of the through New York rate to Nashville, collected by the Louisville & Nashville Railroad Company for carriage from Cincinnati to Nashville. But it is said that if the rate is increased to Nashville so as to make it the same as that of Chattanooga then the river lines will become formidable competitors of the Louisville & Nashville Railroad Company in the through traffic; and freight experts have been produced by the defendants who vaguely express the opinion that to increase the additions made to the trunk-line rates from New York to Cincinnati by the Louisville & Nashville Railroad Company, for its part of the through carriage to Nashville, would induce river competition on this traffic.

"There has been presented to us an able argument to show the powerful effect of potential water competition upon railway rates in cases where comparatively a small percentage of the freight is actually carried by water. The effect of the Erie Canal upon grain rates of freight is cited as a significant illustration. We fully concede much of what is contended on this head, but we find it to have little or no application to the case in hand. It appears by the undisputed evidence that the rates of the Louisville & Nashville Railroad from Cincinnati, Louisville and Evansville have practically destroyed, not only the New York through business by river, but the local river business from those points to Nashville. The total amount of traffic on the Cumberland River to Nashville is so insignificant, as compared with the local traffic to the same place, that it is not worthy of notice. Now, the local railway rates to Nashville from Ohio River points are about 50 per cent. higher than the through rates on New York shipments between the same points. To make the through New York rate to Nashville the same as that to Chattanooga, the Louisville & Nashville Company will not have to charge as much for its part of the carriage as its local rates. If the local rates have reduced river transportation to a minimum it is clear that any increase of through rates, under which they would still be less than local rates, cannot affect river competition at all. In other words, the margin of possible increase in the through rates, without affecting river competition, includes all the increase in rates required to comply with the order appealed from, even if the carriers elect to bring about the equality enjoined in the order by increasing the Nashville rate to the Chattanooga rate. We may, therefore,

eliminate Cumberland River competition as a factor in reaching our conclusion.

Competition Makes Dissimilarity

"The next question for our consideration is whether the competition of the trunk lines to Cincinnati, and of the Louisville & Nashville Railroad to Nashville, makes the conditions of defendants' traffic at that place different from those at Chattanooga. It is settled in the case of *Interstate Commerce Commission v. Alabama M. R. Co.*, 168 U. S. 144, 164, 167, that competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed substantially dissimilar; that the mere fact of competition, however, no matter what its extent or character, does not necessarily relieve the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude consideration of competition in determining dissimilarity of conditions, and that competition may in some cases be such as, having due regard to the interests of the public and the carrier, ought justly to have effect upon the rates. It is then the duty of the Commission and the reviewing courts in such cases to consider, not only the extent, but the character, of the competition relied on as a justification for discrimination against the nearer point. It must, therefore, be relevant to ask why such competition is not also present at the nearer point. If the answer to the question is found in the absence at the nearer point of competing railway lines, of water competition, and of other circumstances naturally creating competition, then the further point may be reasonably held to be merely enjoying in its lower rates its normal advantages, which may and do justly overcome the mere disadvantage of the greater distance of the haul. But when we find that the nearer point has not only the advantage of less haul, but also more railway lines in actual competition, and that there are no other circumstances of substantial advantage in favor of the more distant point, we have a case which the fourth section of the Interstate Commerce Law was passed to meet.

"It is argued that the fact of competitive lower rates at the more distant point, speaks for itself, and that no amount of argument can demonstrate a similarity of condition in the face of such a rate. This is only one of many arguments advanced on behalf of appellants, which, reduced to their last analysis, involve, as a major premise, that the existence of a rate and movement of business under it are a complete justification of it, and foreclose judicial investigation. Such an assumption renders the Interstate Commerce Law nugatory and useless. There are other causes than normal competition that produce discriminatory rates. The Interstate Commerce Law, it is conceded, was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect. But it is not in accord with its spirit or letter to recognize, as a condition justifying discrimination against one locality, competition at a more distant locality, when competition at the nearer point is stifled or reduced, not by normal restrictions, but by agreement between those who otherwise would be competing carriers. The difference in conditions thus produced is effected by a restraint upon trade and commerce, which is not only violative of the common law, but of the so-called Federal Anti-Trust Act. *U. S. v. Trans-Missouri Freight Assn.*, 166 U. S. 290; *U. S. v. Addystone Pipe & Steel Co.*, 29 C. C. A. 141, 85 Fed. 271. Certainly such a difference in con-

ditions ought not to justify a difference in rates before the Commission or the court.

Chattanooga and Nashville Rates

"Chattanooga is 151 miles nearer than Nashville to New York by the Southern and most direct routes. It has at least three through competing Southern lines from New York under different managements. These lines reach Nashville over one road from Chattanooga. Chattanooga is connected with Cincinnati, where the stream of traffic of the East and West trunk lines is reached, by a railroad 335 miles in length. Nashville reaches the same city by a railroad 295 miles in length. So far as the record shows, the conditions of railroad transportation between Cincinnati and Nashville are not substantially different from those between Cincinnati and Chattanooga. Both the Louisville & Nashville and the Cincinnati Southern are Southern roads. The Louisville & Nashville does not encounter as much unrestricted competition at Nashville as the Cincinnati Southern at Chattanooga, for the only other entering Nashville is the Nashville & Chattanooga company, of which the Louisville & Nashville company owns more than one-half the stock. But it is said that the Louisville & Nashville company is vitally interested in building up Nashville by enabling her merchants to compete with those of cities on the Ohio River. Why should the interest of this company be any greater in Nashville than that of the Cincinnati Southern railroad in Chattanooga? The difference in the Chattanooga and Nashville rates is to be found in something other than the physical conditions existing at the two cities; for, regarding them alone, there is no reasonable ground for any substantial disparity. The evidence shows that the rates to Chattanooga from Cincinnati and from the Eastern seaboard have always been fixed and agreed upon by an association of the Southern railway and steamship companies. The Louisville & Nashville company has not been a member of it, but the Nashville, Chattanooga & St. Louis company, of which the Louisville & Nashville company owns a majority of the stock, has always been a member; and so has the Georgia Central Railroad Banking Company, whose road from Atlanta to Savannah the Louisville & Nashville company jointly operates.

"The association has grouped Chattanooga with a large number of towns to the south of it for the same rates, and all the members of the association make their rates to Chattanooga accordingly. The Cincinnati, New Orleans & Texas Pacific Railway has been a member of this association, and it is the agreement between it and the other lines at Chattanooga which has prevented the lowering of its New York rate. Without such an agreement it is not possible to see why normal competition would not give Chattanooga substantially the same rates as Nashville. The result of the agreement is to deny to Chattanooga the natural advantage which direct connection with Cincinnati secures to Nashville, and ought to secure to Chattanooga. The agreement is more than a mere tacit understanding resulting from a praiseworthy desire to avoid rate wars and the carriage of goods at less than cost; for the rates to Nashville are admitted to pay a profit over the cost of transportation, and they are from 25 per cent. to 50 per cent. less than the Chattanooga rate for a considerably longer haul, with no apparent difference in conditions.

"We are pressed with the argument that to reduce the rates to Chattanooga will upset the whole Southern schedule of rates and create the greatest confusion; that for a decade Chattanooga has been grouped

with towns to the south and west of her, shown in the diagram; and that her rates have been the key to the Southern situation. The length of time which an abuse has continued does not justify it. It was because time had not corrected abuses of discrimination that the Interstate Commerce Act was passed. The group in which Chattanooga is placed, shown by the diagram above, puts her on an equality in respect to Eastern rates with towns and cities of much less size and business, and much further removed from the region of trunk-line rates, and with much fewer natural competitive advantages. If taking Chattanooga out of this group and putting it with Nashville requires a readjustment of rates in the South, this is no ground for refusing to do justice to Chattanooga. The truth is that Chattanooga is too advantageously situated with respect to her railway connections to the North and East to be made the first city of importance to bear the heavier burden of Southern rates, when Nashville, her natural competitor, is given Northern rates. The line of division between Northern and Southern rates ought not to be drawn so as to put her to the south of it, if Nashville is to be put to the north of it. And we feel convinced, from a close examination of the evidence, that but for the restriction of normal competition by the Southern Traffic Association, her situation would win for her certainly the same rates as Nashville. It may be that the difficulty of readjusting rates on a new basis is what has delayed justice to Chattanooga. It may well be so formidable as to furnish a motive for maintaining an old abuse."

A Useless Clause

While this case was overruled in the United States Supreme Court, it should be borne in mind that the decision of the court was not upon the points above considered. The reasoning of Judge Taft seems to be sound, and if the ideas here brought forward were to be adopted there would be far less complaint of the abuses of carriers in the matter of relative rates to competing localities.

It should not be inferred from what has preceded that competition is the only thing which can take a case out of the statute. Broadly, inequality of circumstances and conditions are sufficient to justify inequality of rates. Competition is one of the elements to show inequality of circumstances and conditions. The courts have, in general, been rather stringent in the applicability of any case to this section. If there has been doubt the courts have held it within the statute. To take a case beyond the application of the section has required that it be a clear case.

The long and short haul of the Interstate Commerce Law, as it is now upon the statute book, is about as useless as a map pretending to show the railroads of Patagonia. Taken in and of itself it means nothing, for it can be avoided by a thousand and one excuses. Taken in connection with the other portions of the law, it means little, for to the defenses under the fourth section are added the numerous defenses under the sections which one reads with it. No relief can be granted to one who deems himself aggrieved by the fourth section. He finds himself thwarted by the subterfuges of the defendant carrier and finds his head enveloped in a cloud of similar dissimilarity, of dissimilar circumstances and similar conditions,

BEFORE THE INTERSTATE COMMERCE COMMISSION

HEARINGS HELD

August 14 and 15, 1906, Toledo, Ohio.—In the matter of alleged unlawful rates and practices of the carriers reaching Toledo and their principal connections in the transportation of ice to and from Toledo.

COMPLAINTS FILED

On July 28, 1906, J. R. Lucas & Co., hay dealers at East St. Louis, Ill., filed complaint against this carrier, which involves the same principles as the St. Louis Hay & Grain Company case. The defendant is charged with illegally exacting 4 cents per 100 pounds in addition to its hay rate from East St. Louis to Southeastern points, when the hay was unloaded at warehouses in East St. Louis and afterward reconsigned to Southeastern points, but only 2 cents per 100 pounds in addition to such rates when not so unloaded. Reparation based upon the foregoing alleged undue discrimination is asked for in the sum of \$8,714.77.

Manipulation of Ice Rates at Toledo

The investigation by the Interstate Commerce Commission held at Toledo, Ohio, on August 14 and 15 last, of ice trade conditions and the relations between railroads and ice companies was very interesting. An analysis of the evidence brought before the Commission, taken from press dispatches, shows:

First—That at least two railroads, the Ann Arbor and Pere Marquette, which tap the ice fields of Southern Michigan, have organized ice companies. The Ann Arbor was behind the Toledo Ice & Coal Company, and Pere Marquette officials were behind the Michigan Lake Ice Company.

Second—Discriminations in freight rates in favor of the Toledo Ice & Coal Company. Full rates charged to competing ice companies. Free transportation furnished the Toledo Ice & Coal Company for men, horses and supplies from Toledo to Whitmore Lake and return. One year a rebate of 50 cents per car was given to the Toledo Ice & Coal Company.

Third—Michigan Lake Ice Company enjoyed exclusive privilege of icing cars on Pere Marquette. Charges for icing were made on a basis of 6,000 pounds and not near that amount of ice used.

Fourth—Ice companies occupy railroad property, either free of charge or at nominal rental.

Fifth—Demurrage charges against ice and coal were canceled by the Car Service Association.

Sixth—Discrimination in freight rates between Bay City, Mich., and Toledo, via Grand Trunk, Shore Line and Clover Leaf.

Seventh—Illegal tariff charged on ice shipments from Whitmore Lake to Charleston, W. Va., via Ann Arbor.

Eighth—The real powers behind the Interstate Ice Company, of Sandusky, the selling corporation of the ice trust, are the Toledo Ice & Coal Company; F. S. Hubbell, ice man for the Pere Marquette, who furnishes the Michigan Lake Ice Company with ice; Harry Norvel, of Cleveland, and Ed. Kerber and George Seitz, ice wholesalers, of Sandusky.

The relations between the Ann Arbor Railroad and the Toledo Ice & Coal Company were the subject of voluminous evidence.

Annual Reports and Accounting of Carriers Under New Law

On July 27, 1906, the Commission issued to carriers the following circular:

"The Commission directs your special attention to the following provisions and requirements of the twentieth section of the Act to Regulate Commerce, as amended by Act of Congress approved June 29, 1906, and which takes effect August 28, 1906, to wit (here follows the 20th section):

"As to that portion of Section 20 of the act which confers authority upon the Commission to prescribe the forms of all accounts, records, and memoranda, and which forbids carriers from keeping any other accounts, records, or memoranda than those prescribed or approved by the Commission, the carriers are advised that until the Commission shall by order or otherwise prescribe the accounts, records, or memoranda to be kept by any or all carriers subject to the statute, no change in methods of accounting is required of any such carrier. On and after August 28, 1906, the authority of the Commission to inspect the books and accounts of the carriers will, of course, apply.

"The Commission fully realizes the necessity of establishing as soon as possible a satisfactory system of accounting for carriers engaged in the transportation of commerce under the provisions of the regulating statute, and has determined to proceed immediately in the work of arranging and preparing for the discharge of its duty in the matter of prescribing such accounts, records, and memoranda and requiring all practicable uniformity in the accounting systems of the carriers.

"Henry C. Adams, the present statistician of the Commission, will, on and after August 1, 1906, have immediate charge of the preparatory work necessary to carry out the intention of the Commission to prescribe the accounts, records, and memoranda of such carriers.

"The attention of carriers is further called to the requirement in the amended Section 20, that their annual reports must be filed with the Commission on or before September 30 of this and each subsequent year, unless additional time be granted by the Commission."

Conference of the Commission With Railway Traffic Officials

The railway traffic officials who were in conference with the Interstate Commerce Commission on July 31 and August 1 last were committees representing the Western Association, roads west of Chicago and the Southern Association, roads south of the Ohio and Po-

tomac rivers and east of the Mississippi. They submitted three general propositions in the nature of requests relating to the publication and filing of tariffs and kindred matters under the amended law, which takes effect on the 28th of August.

First—That a longer time is necessary than will intervene before the new law takes effect to prepare and print rate schedules in conformity with the amended statute. Incidentally, they ask to be allowed to publish their tariffs in the various stations by placing copies in the custody of an agent and posting a notice that they are open to inspection by any person who desires to consult them.

Second—That the requirement of thirty days' notice of change in rates be modified so as to permit changes in export and import rates on such short notice as may be necessary to meet the competition of foreign carriers.

Third—That in the case of joint tariffs, which are usually issued by the initial carrier, that the terminal charges, as for storage, switching, etc., be published and filed by the delivering roads.

It was understood by those present and stated distinctly by the Commission that it has no discretion under the present law, and consequently can make no order in regard to any of the matters discussed until the new law takes effect. Moreover, as only three members of the Commission were present, which is less than a majority as the Commission will be constituted under the new law, it was announced that no opinion would be expressed or ruling made until the question was considered by the entire Commission. It was, however, intimated by the commissioners present that the carriers should use their best efforts to prepare tariffs in compliance with the law, and that if further time became necessary it would probably be allowed. It was also suggested that a new committee or sub-committee be appointed by the carriers, which should represent the roads generally through the country for further conference with the Commission from time to time as might be desired, with the view to co-operation with the Commission and in aid of uniformity of method and practice. There was a general exchange of views respecting various matters connected with the subjects above mentioned, which will be further considered by the Commission.

Rates Between Same Points on Same Kind of Traffic Going in Opposite Directions

The case of Weil Brothers & Co., of Fort Wayne, Ind., against the Big Four and others, has recently been decided by the Commission in an opinion by Commissioner Clements. The issue presented in this case involved the unreasonableness of the rate on unwashed wool, or "wool in the grease," from Philadelphia to Fort Wayne. While the rate from Philadelphia to Fort Wayne is 62 cents per 100 pounds, the rate eastbound, from Fort Wayne to Philadelphia, is 43 cents. For the difference, alleged to be an overcharge, com-

plainants asked reparation on certain shipments. The Commission held, upon the evidence as presented, that the 62-cent westbound rate is not shown to be unreasonable or unjust, and that the complaint should be dismissed. The Commission said while the law requires all rates to be reasonable and just and forbids unreasonable discriminations, it does not prescribe any measure or test of reasonableness in either case. It is manifest that the reasonableness of every rate or discrimination called into question must be determined and measured by the circumstances and conditions affecting the business. The potency of any particular fact, circumstance or condition in a given case is to such an extent dependent upon or modified by others, so that which is of great importance in one case may be of minor consequence in another. It follows that it cannot be required in reason that rates must in all cases be the same in both directions between the same points any more than they can be made on a strictly uniform mileage basis.

For illustration, since the cost of moving freight must be considered, the difference in grades may in reason justify a somewhat higher rate in one direction than in the opposite. The general movement of all traffic in one direction may so preponderate over that in the other as to require the constant movement of empty cars, with its attendant expense, toward the supply of bulky freights, and thus warrant the carrier in accepting the freight at less than the average rates if above the actual cost of moving the freight to secure some revenue in the right direction, though this has been for the most part urged as a defense for lower rates westward.

A great and increasing volume of freight is a factor of much influence toward the depression of rates. The great volume of freight from the vast grain fields of the West produces a competition to secure the traffic, which, with the facilities provided for its handling, serves to secure for that grain a rate to the seaboard which may not be taken as a fair measure of rates on the same commodities in chance shipments in the opposite direction.

In the commodity under consideration the whole great Western fields and ranges furnish the supplies, and these for the most part move in a steady stream toward the storing and manufacturing centers of the Northeast, naturally resulting in competition more intense than can be expected to result in an effort among the carriers to secure occasional shipments in the other direction.

The rates as stated on eastbound shipments are applicable to any quantity, whether a carload or a single package. This is an advantage to the scourer and spinner in the East as well as the producer in the West, and the Commission has for the most part favored the system of like rates in any quantity where the carrier has seen fit to apply the same as tending toward a simplification of classification and the elimination in a measure of the inevitable discrimination against the

small dealer or shipper, which so often grows out of so-called wholesale rates.

The complainants, who are important buyers of wool to the extent of a million or more pounds per annum, receive the advantage of these commodity rates on any quantity to the Eastern markets. The shipment on which reparation is asked was a small lot of wool rejected because not quite up to the required grade of a sale consummated, and it was returned to Fort Wayne for that reason.

Until the market for the consumption of wool is developed in the West by the establishment of centers for the scouring and spinning of wool it must continue to have but one general movement, and that toward the East. It may be said that such markets may never be established if the rates are not more favorable; but they are not likely to ever depend upon the rates from the Eastern seaboard, but rather, then as now, upon the rates from the local or Western sources of production.

Some allusion was made in the testimony at the hearing of this case to alleged unjust discrimination against Fort Wayne and preference to Chicago and other places by reason of the existence of stoppage-in-transit privileges at such other places and not at Fort Wayne. But this is a question not presented in the pleadings in this case, and, therefore, cannot be determined upon this record. The lower eastbound rate is practically the only fact presented in the record in support of the allegation of the unreasonableness of the westbound rate.

Damages for Failure to Furnish Cars for Hay Shippers

The Commission has recently announced its decision in the case of James E. Eaton, of Grover Hill, Ohio, against the Cincinnati, Hamilton & Dayton Ry. Co. The case involves the failure and refusal of the carrier to furnish complainant cars for shipment of hay and other produce while furnishing competitors cars on orders subsequent to his own. The Commission held that complainant was unjustly discriminated against and awarded reparation in the sum of \$200. In its decision, the Commission said that the facts leave no question in our minds that unjust discrimination was practiced against complainant, but the difficulty of measuring the actual damages by way of reparation shows the importance of reasonable rates and equal treatment, since there can be no adequate reparation which will repair the wrongs to a shipper which injustice may work. That the complainant has been damaged in this case by unfair treatment is clear, but to measure that damage in a way to make him whole—to reimburse him for lost time, or injury to his business, for lost profits, and the loss of prestige and standing with his neighbors, in canceled contracts and voided sales, in losses of capital employed—and at the same time be fair to the defendant railway, is not only difficult, but impossible. The best that can be

done is to estimate as nearly as may be that which may with reasonable certainty be directly charged to such unfair treatment, and for the rest the complainant must suffer, as is always the case where injustice is done by such discriminations.

The claim as stated above—\$1,000—makes no allowance for the difficulties under which the defendant line labored in the matter of car shortage, which was real and serious and was not confined to that locality. But the complainant had secured 4,000 bushels of oats, and when he could get no cars he had to release the oats, which were sold to the elevator people, and they got the cars in which to ship. This was manifestly unjust to complainant. There was no very radical difference in the methods of hauling the produce in these months. The corn crop was not coming in. The elevators bought grain for the most part as it was brought to the elevator, and this was a convenience to the neighborhood, since it found a market always open for the disposal of its produce. On the other hand, the prices offered, according to the testimony of the complainant, which was reasonable and undisputed, left such seductive margins as to tempt the efforts of the track buyers, who naturally at the same figures would have little chance of competing with the established elevator as a place for the farmers to dispose of their crops.

The complainant declared that he paid 1 cent per bushel more for oats, 8 cents per 100 pounds for corn, and from 50 cents to \$1.25 more per ton for hay, though he implied that was a matter of judgment as to quality, and that the difference in opinion as to grade might sometimes be the other way. These higher prices were an advantage to the community, but are to be expected where a fixed and expensive plant is to be maintained, such as elevators, and constant attendance of a clerical and laboring force, with the necessary capital at command to buy at all times. With all the advantages which an elevator may prove as a home market to the community, and which may accrue to the railroad from a large and constant shipper, it does not justify the agents of the line so favoring such an establishment in the matter of facilities of transportation as to practically put other would-be shippers out of the business.

The elevator received 68 cars in September, 66 each in October and November; that is, 132 cars for the months of October and about 22 for September after the 20th, when complainant made his first application for cars, a total of 154, while complainant received but 9. This only establishes the fact that the agent of the defendant was in his distribution of cars not only giving consideration to the stock on hand at the elevator, which would require not above 22 or 23 cars, but also to the stock which the elevator controlled or was to receive at the track side, as was the case with the stock of complainant. If the complainant had received one-half of this 163 cars, it would have given him about 70 more than he received. If he had re-

ceived one-third, it would have been 40 more than he was supplied. His claim that he could have used 100 cars in that period is much like that of the elevator company, which estimated it could have used 35 per month more than was supplied them. Ten cars a month out of those assigned, in addition to what complainant received, would have had at least a semblance of fairness, and this would, for the three months, have been less than 20 per cent. of those at the disposal of the railway company.

Complainant made oath that two-thirds or three-fourths of any cars assigned to him would have moved in interstate business, and this was not disputed, and while this discrimination subjected complainant to losses as well on cars which might not have left the State, it removes a doubt to omit cars for State shipments from any calculation relating to reparation. There remains 20 cars which the defendant should have supplied complainant, and for which illegal discrimination he is entitled to compensation. On the 4,000 bushels of oats which he had to surrender and for which cars were furnished his competitors, his loss was 2 cents per bushel, or \$80. On the other 16 cars, counting his profits at the lowest estimate made on his hay sales, and not reckoning any other transaction in oats, he was subjected to further losses of \$144, or a total of \$224.

To have earned full profits on all his transactions would have required his time, superintending operations, and the use of his capital, unless his neighbors trusted him to sell on a commission. On the other hand, even after eliminating his losses for defendant's failure to furnish system cars for State shipments, under all the circumstances, the sum of \$200 probably falls far short of adequate compensation for the injuries sustained by him. But we do not feel justified in measuring an award of reparation by the probabilities of profit. We cannot go beyond the amount of damages which by the testimony is shown with reasonable certainty.

Lumber Rates to Virginia and West Virginia Intermediate Points

In an opinion recently rendered by Commissioner Clements, the Commission decided the case of Farrar Lumber Company, of Dalton, Ga., against the Southern and Norfolk & Western railway companies. The complaint challenged the reasonableness of rates on lumber, in carloads, from Dalton, Ga., to certain points in Virginia and West Virginia on the Norfolk & Western Railway, between Bristol and Lynchburg, and between Bristol and Kenova. It appeared that the rates to Roanoke, Lynchburg and Kenova are joint through rates, whereas those to the intermediate points are the sums of the locals to and from Bristol. The Commission held that the facts in the case, in view of the judicial interpretations of the act, furnish no basis for a conclusion that the rates in question violate the long and short haul section; but that, for reasons stated in the decision, the rates complained of are

unreasonable and unduly discriminatory. Defendants were ordered to cease and desist therefrom. The Commission said that nothing had been shown to justify this rate of 14.5 mills per ton per mile to Roanoke, and any rate above that established by the Commission in 1888 and maintained since until after the filing of this complaint must be considered unreasonable, and the increase of this rate to 22 cents per 100 pounds since the filing of this complaint, for the sole and avowed purpose of thus justifying the unreasonable rates to intermediate points under the fourth section of the Act to Regulate Commerce must be held to be without justification.

The rate per ton per mile is not always the measure of a reasonable rate, and, rigidly applied, would make distance alone the gauge for transportation charges, but it is always valuable as affording a basis of comparison for relative rate burdens.

The rate per ton per mile for all freight upon the Norfolk & Western Railway for 1904 was 0.474, or less than 5 mills per ton per mile. This, of course, includes through freights and is reduced by the bulky, low grade carriage. It is by no means to be considered that single cars of limited and uncertain volume are to be reduced to this standard, but it is to be remembered that this lumber does not originate upon this line, that there is no initial charge upon its collection; it is a part of a through haul from the Southern Railway, is carried through Bristol without appreciable delay; and yet, with these inducements and reasons for approaching the minimum or average freight charge, this road exacts rates to the local points on its line ranging to above 2 cents per ton per mile.

The Norfolk & Western officials expressed a willingness to protect their old rates, using the Lynchburg rates as maxima to intermediate points, but because these connecting lines could come to no agreement as to joint rates is no just cause for the extortionate rates which have resulted by the application of the locals to through carload freights. No sufficient data or proofs were submitted as a basis from which the Commission could fix a definite award of reparation.

Reasonableness of Lumber Rates From Dalton, Ga., to Cincinnati, Ohio

The Commission has recently announced its decision in the case of the Farrar Lumber Company against the Southern Railway Company and others, involving the reasonableness of rates on Southern pine lumber from Dalton, Ga., to Cincinnati, Ohio, as compared to such rates from Chattanooga, Tenn., to Cincinnati. The decision was prepared by Commissioner Clements, who ruled that it is by no means clear that the discriminations of the past complained of were so undue or unreasonable, in view of the whole situation, as to afford any basis for complainants' claim of reparation. If it were, this record supplies no such data or proofs as would be necessary to make such definite award of reparation as the law contemplates.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Steamship Liability "At Carriers' Risk"

To the Editor of Freight:

SIR—We desire an expression from you as to our standing in the following matter:

Some time ago we had a loss of a number of shipments on one of the steamship lines operating out of New York to another State, and we stamped on our bills of lading, before delivery to said line, the words "At Carrier's Risk," our object being that we would pay the additional charges of 20 per cent. and cost of marine insurance to the carriers, as provided on their uniform bill of lading, in order that they might be held liable for all losses, from which they exempt themselves on said uniform bill of lading, which takes a lower rate.

We have been given to understand by said steamship company that the words "At Carrier's Risk" meant nothing to them, and that consequently these goods were not insured at the time of this loss. As the goods never reached the consignees, we cannot, of course, determine whether the steamship would have charged the additional rate, it being our custom to have the consignees pay freight and other charges and then we credit them on return of receipted freight bill.

We, however, claim that the acceptance by their agent without reservation of these shipments and the signing of our bills of lading, copy of which they retain, which also contained the above words, holds them to this loss, as this notice to their agent was clear enough, and he has the right, and, in fact, it is his business to make any alterations or changes that do not gibe with their policy.

Kindly address reply to the undersigned, and thanking you for same, we remain,

Yours very truly,

STANDARD VARNISH WORKS,
 R. A. VAN KIRK,
 Traffic Mgr.

NEW YORK, N. Y., July 13, 1906.

MEMO. INQUIRY. STANDARD VARNISH WORKS.

Please forward copy of bill of lading used. Who supplies them, the water carrier or the consignor? What was the cause of the loss of the property, if known? Does the rule or regulation of the steamship company, known to the inquirer, have any connection with this matter?

To the Editor of Freight:

SIR—We have your favor of the 16th inst., in which your Legal Department asked for additional information, and in reply beg to state that the inclosed bill of lading is the one which we use in connection with our shipments under every line, and it is, of course, submitted by ourselves to the carrier at the time the shipment is placed in their hands. The conditions, however, are the same as the uniform bill of lading, and we think that, upon investigation, you will see that everything is perfectly legitimate.

The cause of the loss of the property of which we speak was due to the fact that the cargo of said steamship took fire en route, and the consequent loss was by fire, water and steam. However, our main point of contention is not as to their liability for loss because

we may not have suffered anything from the fire itself, and they, of course, are not liable for water damage, but we think that, in view of the facts as stated, they should stand the general average charges which resulted thereby.

Your question regarding the rule of regulation of the steamship company, etc., we answer by saying that the insuring of shipments against all loss under this form is a new departure with us.

Trusting that this answers your questions, and awaiting your further advices, we remain,

Yours truly,

STANDARD VARNISH WORKS,
 R. A. VAN KIRK.

NEW YORK, July 17, 1906.

INQUIRY STANDARD VARNISH WORKS.

The bill of lading transmitted is returned. This bears the rubber stamp "at carrier's risk," also "owner's risk of leakage," also "subject to all conditions and exception named in our bill of lading." It also bears the condition in print: "The conditions of the regular bill of lading of the steamship company receiving this shipment are hereby made a portion of this contract, as to, and only as to, the service rendered by said steamship company, and are binding as to said service the same as expressed herein."

It is quite evident that the conditions of the steamship bill of lading apply to this shipment, if those conditions be known to the consignor. If the inquirer can ascertain the liability of the steamship company by comparing its bill of lading with the Harter Act, a copy of the steamship bill of lading need not be forwarded. Otherwise, we would like to have a copy of it. It should be recalled that all conditions upon the steamship bill of lading may not be in force and effect because, by interpretation of the Harter act, several conditions are made null and void.

That portion of the Harter Act (Act February 13, 1893) applying, reads:

"That it shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant or agreement whereby it, he or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping shall be null and void and of no effect."

Section 4282, Revised Statutes, providing for liability of shipowners for loss or damage occasioned by fire, reads:

"No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever which shall be shipped, taken in or put aboard any

such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner."

This statute does not exempt a vessel from the general average contribution.

To the Editor of Freight:

SIR—We inclose you herewith B/L of the M. O. Line, as per your request of July 19, which we trust will enable you to decide this question for us.

As you no doubt know, the conditions of our B/L are those which are published in the Official and Southern classifications.

Awaiting your further advices, we remain,

Yours truly,

STANDARD VARNISH WORKS,

R. A. VAN KIRK,

Traf. Mgr.

NEW YORK, July 23, 1906.

INQUIRY STANDARD VARNISH WORKS.

The water bill of lading apparently shows that the shipment was insured. If such be the case, the inquirer's claim should be under the policy of insurance, as doubtless the insurance company is, by the policy, subrogated to the rights of the owner.

Answering the direct question, "we think that in view of the facts as stated they (the steamship company) should stand the general average charges which resulted thereby." Under Section 4282, Revised Statutes, heretofore quoted, the carrier is not exempt from the general average contribution, and it is well settled law that if a master of a ship should pour water into a ship's hold to extinguish a fire which is threatening destruction to all, such act is a general average act. If by such action the cargo is damaged, or other injury is caused by water to the property, the loss is to be made good by contribution.

The liability of carriers by water is defined by the Revised Statutes heretofore quoted, and the Harter Act, and in this respect as well as in others their liabilities are different from those of rail carriers.

Shipper Need Not Route Goods

To the Editor of Freight:

SIR—We recently made a shipment to a small town in Illinois, north of Chicago, on which we left the routing open. It so happened that the railway company to whom this shipment was delivered by us routed the shipment incorrectly, so that the same was delivered to a town intermediate to destination given, from which point consignee was notified to call for the goods. This he naturally refused to do, as the goods were sold f. o. b. his station.

We have found upon investigation that the railway company to whom this shipment was turned over for final delivery had no station at the town to which the shipment was consigned. This is the reason they give for notifying consignee to call for the goods at their nearest station to which the goods had been hauled.

Now, if the railway company to whom we delivered the shipment had routed the same via another line, there would have been no trouble, as the other line has a station at the point in question. Upon making this discovery we ordered our agent here to see to it that the shipment was forwarded to the proper destination. These instructions were not complied with promptly,

and in the meantime consignee was complaining because he had not received his goods. In order to hold him as a customer we were obliged to make a duplicate shipment. When the original shipment finally arrived at destination, consignee refused to accept, as in the meantime he had received the duplicate shipment. We, therefore, placed claim with the railway company to cover the original shipment, but we are expecting them to refuse payment on the grounds that we did not furnish them with the necessary routing instructions.

Now, we wish to know if it is absolutely necessary for us to furnish through routing instructions on each and every shipment in order to hold the initial railway company responsible for safe delivery. Or are the facts in the above case such that we would be justified in remaining firm and insisting upon payment of this claim?

Further, we wish to know if we or the railway company are responsible when a shipment goes to the wrong destination on account of there being two towns in a state by the same name, and we did not furnish the county in which the town was located to which the shipment should have gone.

In the last named case we were not aware of the fact that there were two towns in that State by the same name, and we take the position that the railway company should have known this and should have notified us before allowing the shipment to go forward, so that we could have furnished the county. Are we correct in the position taken?

If you will be kind enough to answer these inquiries in your next number you will confer a favor that will be thoroughly appreciated by us and for which we beg to thank you in advance.

Yours very truly,

NAME WITHHELD BY REQUEST.

BURLINGTON, Ia., U. S. A., June 20, 1906.

On the right of a shipper to route his freight and the liability of a carrier for failure to obey these instructions and to transmit the instruction to a connecting carrier, see *FREIGHT*, June, 1906, page 311.

It is the duty of a shipper to indicate plainly to the carrier to what place delivery of the goods should be made. Such specific directions and descriptions of the destination should be made that an intelligent person would know the proper terminal. If, for example, goods should be billed to Washington or Quincy, without further description, a carrier could not well be blamed for sending the commodity to any one of the numerous places of these names in the United States. If, however, goods having arrived at a wrong destination and the carrier having been given instructions concerning the proper place of delivery with request to forward, and the carrier delayed obeying such instructions, it will be held liable for the damages resulting by reason of its failure to forward the goods promptly to proper place.

To the Editor of Freight:

SIR—We are in receipt of your reply to our inquiry of the 20th inst. The same, however, does not give us the information which we desire. We have read over the article referred to in the communication from your legal department, but do not find anything in the same that will answer our inquiry directly.

What we wish to know is: Is it absolutely neces-

sary that we should specify routing instructions in order to release ourselves from responsibility for the proper delivery of a shipment to consignee?

We regret that we should be obliged to bother you again, but as we are still "at sea" we trust that you will find it agreeable to look into the matter further, and we ask that you kindly accept our sincere thanks in advance.

Yours truly,

(NAME WITHHELD BY REQUEST).

BURLINGTON, Ia., June 30, 1906.

There is no obligation upon a shipper to specify routing instructions in order to release himself from responsibility for a proper delivery of the shipment to the consignee. Subject to particular rules, the consignor has the right to route the freight, but it is not necessary that he should do so. The duty of the consignor in this behalf ends when he shall have so marked the goods or so consigned them that the place to which they are destined can be ascertained.

Furnishing Proper Equipment

To the Editor of Freight:

SIR—We thank you for your kind favor of the 20th, inclosing reply from your legal department as to the railroad companies furnishing grain doors and proper equipment for handling our commodity.

Will you also kindly advise if we can legally collect from the railroad companies where we are compelled to furnish these grain doors ourselves. Would you advise filing a claim with them, or taking it up in a legal form?

Yours truly,

WESTERN STONEWARE COMPANY,

By C. S. WISE,

Mgr. Traffic Dept.

MONMOUTH, Ill., June 25, 1906.

It is advised that claims be made against the initial carrier for the value of lumber used as grain doors or strips in order to permit the loading of a car properly. Upon non-payment of the claims within a reasonable time, the inquirer is advised to institute suit to recover.

It would be well to have the agent issuing bill of lading note thereon that doors or slats were supplied by consignor.

Damage Caused by Frost

To the Editor of Freight:

SIR—Will you kindly give me the benefit of your information on a case as follows: In January, 1904, I shipped two cars of potatoes to Pittsburg, Pa., that were frozen in transit and caused a loss to me to the extent of about \$150 on the two cars. Both shipments originated on the St. Paul, in Green Bay, and were delivered apparently in good order by the St. Paul to the connecting line, namely the Pere Marquette. According to the temperature furnished to me by the United States Weather Bureau, it went down to as low as 20 below zero while the potatoes were in the hands of the P. M. In each case I was advised by the United States Weather Bureau, after the potatoes had left our station, predicting a cold wave coming from the West. I notified the officials of the P. M. Rv. of the predicted cold wave. I also wired their Freight Claim Agent at Detroit and also their general offices at Milwaukee to be sure and look after these two shipments of potatoes and protect from frost. I

entered claims against the Pere Marquette on both shipments and same has been refused payment. The defendant claims that he cannot be held responsible for damage caused by frost while in transit.

An early reply will be greatly appreciated.

Yours truly,

A. L. THOMAS.

GREEN BAY, Wis., August 6, 1906.

INQUIRY A. L. THOMAS.

At common law a carrier is not liable for the acts of God. The weight of the decisions is to the effect that a sudden frost is such an act as to fall within the term "acts of God." In addition to this the usual bill of lading exempts the carrier from liability from "changes in weather, heat, frost, wet, or decay." The carrier handling this shipment is not liable for the loss occasioned by freezing unless the fault of the carrier so concurs that it can be said that the injury was due to its negligence.

Reshipments at State Rates

To the Editor of Freight:

SIR—On March 3, 1906, we shipped from Milwaukee, via Blue Line, N. Y. C. & H., Car No. 91686, barley screenings to Yonkers, N. Y. Upon arrival of the screenings at Yonkers our customer claimed they were not up to sample, and, as a consequence, he would not accept them at any price. We resold the car at New York and ordered it forwarded on original billing March 29. On April 5, local office of the N. Y. C. & H. R. R. advised us that car could not be forwarded on original billing and would have to move on the flat rate from Yonkers to New York. The car was drawing demurrage, and as there was no possible chance of disposing of it at Yonkers we were compelled to submit to this unusual and unreasonable procedure and allow the car to go forward on the flat rate, believing that we would be able to secure reimbursement by way of claim.

As near as we can calculate, the geographical location of Yonkers is such as to make the haul to New York perfectly direct, and inasmuch as the N. Y. C. people have hitherto never refused to forward a car on original billing when the haul was direct, we feel that we are entitled to the freight charges collected from Yonkers to New York. Furthermore, it appears to us that in any case the charge of about 9 cents per hundred weight, Yonkers to New York, a distance of 15.22 miles, is exorbitant.

We would greatly appreciate if you would investigate this matter and report to us the outcome at the earliest possible moment.

Yours very truly,

CHAS. A. KRAUSE GRAIN COMPANY.

MILWAUKEE, Wis., August 7, 1906.

INQUIRY CHAS. A. KRAUSE GRAIN CO.

We know of no rule or regulation to require a carrier which, having accepted a shipment for a point on its line to send forward to another destination after the goods had arrived at original destination, charging only the through rate. The contract of carriage from point of origin to original destination is complete upon the delivery of property at destination and tendering to the consignee. A subsequent movement of the traffic is a new contract and not a modification of the original contract, unless the parties so agree.

While the rate of 9 cents per 100 pounds from

Yonkers to New York appears unreasonable, it is an intrastate rate and subject only to the laws of the State of New York.

If the New York Central have hitherto been in the habit of forwarding a car on the original billing when the haul was direct at the through rate, after the property had arrived at original destination, we see no reason why such practice should not have prevailed in this case. However, we are inclined to think that it is not the practice of the New York Central Railroad or other carriers to permit such change of billing after the goods have arrived.

May Charge for Storage

To the Editor of Freight:

SIR—Taking advantage of your legal department, as a subscriber to FREIGHT, we take the liberty of asking your opinion on the following matter:

Our stations are in the habit of making shipments in L. C. L. lots, and occasionally, for some reason or other, a barrel of oil is refused by consignee. We never ship a barrel of oil, however, unless we have a signed order from the customer. When the barrel of oil is refused the railroad company usually asks for disposition, and in the meantime storage charges generally accrue. It has been the wont of our stations to make the proposition to the railroad company to return the barrels of oil to original shipping point and pay the freight both ways, provided the carriers would cancel any accrued storage charges. They invariably refuse to do this, and what we would like to know is, Can the carriers legally collect these charges?

We would be very glad to hear from you just as promptly as possible, having several cases of this kind up at the present time.

Yours very truly,
PEERLESS TRANSIT LINE,
W. E. MACEWEN,
C. A.

CLEVELAND, Ohio, August 7, 1906.

INQUIRY PEERLESS TRANSIT LINE.

It is the duty of a common carrier, after goods have arrived at destination, to exercise reasonable care to prevent injury to them by storing or otherwise caring for them. Having warehoused the property, the carrier is under a duty to exercise a reasonable care in protecting the goods from injury. A company is entitled to compensation for the storage furnished provided it is reasonable. This rule does not apply to heavy goods such as coal, or stone, as in such cases there is no duty to store the property.

Claim for Smashing a Trunk

To the Editor of Freight:

SIR—We desire to ask your opinion and advice in regard to a claim amounting to \$39.25, which we filed against the Big Four R. R. Co., to cover the value of a trunk smashed by a passing train at Trimble, Ill., June 30, 1905.

This is a station at which there is no regular agent, but the duties of the agent are attended to by a storekeeper, who also runs his store in connection with the railroad station. At the time our traveling man had his trunk delivered at the station the agent was not present, but the driver states that the trunk was placed over 3 feet from the outside of the rail,

and we contend that this is a reasonable distance for any ordinary train to have passed without striking the trunk. It has been shown through an investigation of this matter that a gravel train passed by, and that the trunk was struck by one of the swinging doors on an empty car in such train. It is shown that it is not an infrequent occurrence for a train to have an open, loose door, and although we have supported our claim with affidavits, Mr. J. B. Calkins, the general baggage agent of that road, arbitrarily refuses to make a settlement, and gets behind his legal department by insisting that the only settlement which can be made would be at the end of a lawsuit. The amount involved is hardly sufficient to justify us in going to the expense of a lawsuit, although we have no doubt we could win out in such a case. We have sustained all of our points by letters and affidavits from various parties, and the transportation company, through its arbitrary baggage agent, pronounces all such evidence as of no real value as compared with their statement that the trunk was left too near the track, and was damaged by some passing train. As neither the agent of the road or any other representative of the railway company was present and saw that the trunk was placed too near the track, we contend that their action in this matter is unfair and unreasonable. We would like to be advised as to the liability of the railway company at a station like this, where the agent has other duties than those of the railway company's, and also as to what course you would advise us to pursue in regard to securing a settlement, if such a one can be secured outside of the courts. We certainly think that the arbitrary action of General Baggage Agent Calkins is liable to drive away from his company more business than his salary would amount to, if it should be generally known that his superior officers sustain him in his unfair decision.

Yours very truly,
GUTHMAN, CARPENTER & TELLING,
CHICAGO, Ill., August 8, 1906.

INQUIRY GUTHMAN, CARPENTER & TELLING.

It is the duty of the common carrier to properly care for baggage for a reasonable time after its delivery at destination whether or not it has provided a baggage room or other facilities. The question of what is a reasonable time during which the common carrier must properly protect the baggage is ordinarily one for a jury which will take into consideration all the facts of the case, including the character of the station or depot and the facilities of the carrier for receiving and delivering baggage and the carrier's general custom of transacting such business at the destination. For such period of time as may be determined reasonable the carrier's liability as such continues; it must, during that time, exercise extraordinary care. After the lapse of a reasonable time the carrier's liability as a warehouseman continues, and it must use ordinary care in such a case. It should be noted that this statement applies to baggage, namely, personal wearing apparel and not to samples.

The inquirer indicates that the damage is to the trunk; but if the claim is for injury alone to the trunk, it must indeed have been a valuable one to sustain such an amount of injury. If the claim is for injury to samples, which have been held to be within and without the term "baggage," the place where suit is brought

will govern the liability of the carrier. If, however, the carrier has received the sample trunk for transportation as baggage, it falls within the term and the carrier is liable therefor.

We are strongly of the opinion that the carrier is liable in this case. For, whether the baggage had remained a reasonable length of time without being removed the carrier was negligent either in allowing the trunk to remain too close to the track or permit a train with swinging doors to pass the station, or it was negligent in both respects.

Tariffs Do Not Change the Law

To the Editor of Freight:

SIR—Please note attached letter from the General Freight Agent of the Missouri, Kansas & Texas Railway Company in reference to furnishing grain doors at our Clinton, Mo., plant.

Kindly advise if the change in their tariffs eliminates their liability of furnishing the necessary equipment for the transportation of our commodity in car-load lots.

Your prompt attention will be appreciated.

Yours truly,

WESTERN STONEWARE CO.

By C. S. Wise, Mgr. Traf. Dept.

MONMOUTH, Ill., July 30, 1906.

(Copy.)

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
707 CHESTNUT STREET,

ST. LOUIS, Mo., July 27, 1906.

WESTERN STONEWARE COMPANY, Monmouth, Ill.:

GENTLEMEN—Your favor of July 20 was duly received and contents carefully noted. Your claims, when presented, will receive proper attention and consideration, and you will be advised what disposition we shall make of them.

I note your views on this subject, and that you are handling it as a matter of business and with no ill feeling. I fully appreciate this and heartily reciprocate your feeling in the matter. There seems to be entirely an honest difference of opinion as to our obligations and responsibilities in the matter, and we, taking the position we have, are, of course, willing to submit to the proper test.

I think there is a bare possibility that a decision of the court might require that we furnish grain doors while our tariffs are in their present shape, and in order to remove that doubt, we shall amend our tariffs, effective at the earliest possible moment, to provide that the rates named in them will apply to stoneware in carloads only upon the condition that it be placed in our cars packed in crates or boxes, or that the bulk stoneware be loaded by shippers and all material necessary to its proper stowage be furnished by them and at their expense.

Yours truly,

W. B. GROSECLOSE.

G. F. A.

INQUIRY WESTERN STONEWARE CO.

Ordinarily, a common carrier by rail cannot by any notice, regulation, tariff, or otherwise relieve itself from the duties and obligations which the law imposes. The common carrier at common law is required to furnish suitable equipment for the transportation of the particular commodity which is tendered by the shipper. It cannot evade the performance of

this duty. Under the new law of 1906, the liability of the carrier is increased to some extent. The term "transportation" is defined to "include cars and all vehicles and all instrumentalities and facilities of shipment or carriage"; "and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor." "All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be just and reasonable."

If the M., K. & T. Ry. Co. propose to attempt to evade their common law obligations and responsibilities, particularly as amended by the rate law of 1906, by filing and publishing such a tariff that they will require crockery to be packed in a particular way, or require shippers to furnish a part of the facilities and instrumentalities necessary to transport the goods, without changing the rate, it would appear that the new rate is unreasonable to the extent of the cost to the shipper of such facilities and equipment.

The duty upon the carrier is to furnish the doors to the cars; it cannot evade this duty without violating its obligations, and more than likely its charter. It was undoubtedly chartered to do the business of a common carrier. Failing to be such, or evading its duty and obligations as such, subjects it to a forfeiture of charter at the hands of the State.

Transportation Company Is Liable

To the Editor of Freight:

SIR—As subscribers to your valuable journal, we would like to know if, in your opinion, our legal position is sufficiently clear to substantiate our claim.

On June 12, 1906, we delivered to the Merchants' & Miners' Transportation Company, of this city, for transportation on one of their ships to a point in Florida, a part shipment amounting to about \$3,500. The goods delivered were a part owing on shipment, the balance of which we were to deliver the following day. Our bill of lading was made out covering the entire shipment, but the bills were held by the transportation company until we had completed the delivery.

In the early morning of June 13 a fire broke out and destroyed the M. & M. Transportation Company's terminal at this point, and consumed the portion of shipment left them for transportation. As the goods in question had never been put on the ship and had not been rated, we claim the transportation company are responsible for the amount of our claim. They, on the other hand, decline claim upon the ground outlined in their letter, which we quote as follows:

"Replying to your letter of July 31, regarding your claim for \$32.72, covering the loss of a part shipment burned on our Savannah Line pier, this city, in the fire of June 13.

"We have investigated this matter further, and have positive advices from our Baltimore agent, Mr. Gillingham, that no bill of lading was left with us to be signed when this part shipment was delivered at our wharf. The part of the shipment which was burned was delivered at our wharf late Tuesday evening, June 12, and it is our information that the balance of the shipment was to have followed the next day. Be that as it may, however, this was not an insured ship-

ment, and while we regret exceedingly that you should be losers in any way on account of this fire, yet we cannot admit any liability whatever for the loss, and must again decline to entertain your claim."

The contention is, as stated above, that they are responsible until the goods are actually in transit. Had their vessel been damaged by fire or water, we, of course, would have no rights in the premises beyond that of salvage. As stated before, the shipment was not insured and had not even been rated.

Will be glad to have your opinion on this, as we would like to establish our point for the sake of precedent.

Yours truly,

CUYLER & MOHLER.

BALTIMORE, Md., August 16, 1906.

INQUIRY CUYLER & MOHLER.

The contention of the transportation company that it is not liable for the value of the goods in this case because they were not actually in transit is thoroughly unsound. A transportation company is liable as insurers for goods intrusted to their care. They are excused from this liability only if the loss occur by (1) what is termed the act of God, (2) the act of the public enemy, (3) the act of public authority, (4) the act of the shipper, or (5) the inherent nature of the goods. A common carrier may be liable for the value of goods as such or as a warehouseman. The liability in the two cases is materially different. In the former the liability is, subject to the exceptions named, absolute; in the latter it is such that it calls for the use of ordinary care only.

It is to be noted that the Harter Act does not apply to this case. That statute applies only to goods which have been placed on board of the vessel.

If the carrier is liable as warehouseman, he receives the goods in such way that they are not for transportation, or he has transported them, and having finished his and his liability as common carrier having ended, he takes care of the goods for a reasonable time thereafter. It is manifest that in this case the goods were not placed on the wharf or dock for storage. They were there for the purpose of being transported by the carrier. Knowledge of this fact was brought home to the company; the consignor says bills of lading were sent; the carrier admits that it knew the balance of the shipment was to be sent to the wharf the succeeding day.

It should be borne in mind that if the carrier is liable as warehouseman, if he could by the use of reasonable diligence have removed the property to a place of safety he is nevertheless liable for their value.

Under the law relating to common carriers, as provided by the common law, and with reference to this case but two main questions present themselves: 1. What was the cause of the fire? From the information at hand it is unknown. Without assuming that it was due to the design of the carrier, it is nevertheless the weight of authority that if fire occur from unknown causes, such fire is not such an act of God as will excuse the carrier from its liability. 2. Was there a delivery of the property to the carrier for transportation? We think there was such a delivery. The shipper had

parted absolutely with the custody of the goods; he had given the shipping instructions; he had placed the property where it was the custom to place it; nothing remained by him to be done.

Upon the whole, and after a careful review of the decisions, we think that the carrier is liable for the value of the shipment, subject, however, to the rights of parties under local customs, laws and regulations, if any.

Tanning Extract Not Bark Extract

To the Editor of Freight:

SIR—I inclose a memorandum from the N. Y., N. H. & H. R. R. which is self-explanatory. There has been no change in packing, value or otherwise to cause a change in rates or classification of the products referred to. Will you kindly let me know what can be done to secure a return to the old classification or to the rates which were charged thereunder?

Thanking you in advance for your reply, I remain
Yours very truly, JOHN D. LEWIS.

PROVIDENCE, R. I., August 8, 1906.

MEMO.

Bark extract, liquid, in wood, prior to July 1, '06, appeared in the Official Classification as taking 3d class rate. July 1, Official Classification No. 28 was issued and bark extract was omitted therefrom. This throws bark extract into 2d class, 1 c. 1., under this heading, as shown in the classification: "Extracts, liquid, N. O. S. (not otherwise specified), in wood, 2d class less carloads, 4th class carloads."

Attached bills charged on basis new classification
GEO. E. WOODWORD,
Freight Agt.

August 4, 1906.

INQUIRY JOHN D. LEWIS.

Concerning the classification of bark extract, liquid, in wood, 1 c. 1., it is our opinion that the agent is entirely wrong in his deduction. There has been no change in the classification of bark extract. In Official Classification No. 28 the classification committee, to be more specific, no doubt, substituted tanning extract, which covers any extract used for tanning, and this, upon referring to Official Classification No. 28, you will find is third class 1 c. 1.

We would suggest that in the future you specify "Tanning Extract" on your bills of lading.

Port Distances From Chicago

To the Editor of Freight:

SIR—Please advise me the distance by rail, from Chicago to New York and New Orleans, also from St. Louis, Kansas City and Omaha to the same places.
C. G. KENTON.

ATHENS, Ohio, August 19, 1906.

The short line distance, Chicago to New York, is 912 miles; the short line distance, Chicago to New Orleans, is 912 miles. The short line distance, St. Louis to New York, is 1,050 miles; to New Orleans, 700 miles. The short line distance from Kansas City to New York is 1,385 miles; to New Orleans, 878 miles. The short line distance from Omaha to New York is 1,402 miles; to New Orleans, 1,070 miles.—
[Ed.]

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Securing Payments for Damage

The difficulties in securing payment for damage to goods shipped by connecting carriers is well illustrated by the rough road over which the plaintiff was compelled to go in the case of *Hirsh v. N. Y. C. & H. R. R.* (99 N. Y. Supp. 431). The shipper sent from a place in New York certain packages and bundles of manila paper. These were delivered by the N. Y. C. to a steamship pier, from whence it was transported by water to Los Angeles. Upon arrival at destination the goods were found to be damaged. In the deposition of the consignee, he said that the paper was badly soiled and looked as if it has been in the hold of a vessel with lamp black, coal, or some other black substance piled on top of it; that the bundles were torn; that the roll paper was badly crushed and the ends knocked out. It appeared that the receipt given by the steamship stated that the covers were torn and the ends exposed. It appears from a comparison of the receipt of the steamship company and the testimony concerning the damaged condition at destination, that the two damages were of a different nature, and perhaps caused in part by each of the connecting carriers. The court held that the receipt of the steamship company to the initial line was not competent evidence. In disposing of the case the court said: "It seems clear that the evidence fails to show any damage to the property while on the defendant's line but, on the contrary, points rather to the conclusion that the damage was caused after the property left defendant's possession, and on some of the lines over which it was transported in going to Los Angeles."

Signing a Release

An interesting case of agency and authority of one who signed a release was recently decided in the Supreme Court of New York. The suit was brought by Hailparn against the Joy Steamship Company, to recover for damages for eleven packages of household goods. The court, in its opinion, said:

"This defendant is a common carrier, and undertook to convey the goods from Boston to New York. The goods were delivered in a greatly damaged condition, but the court below dismissed the complaint on the ground that a release under seal was executed by plaintiff's agent against any damages occasioned by defendant's negligence, in consideration of the reduced rate at which the shipment was made. The plaintiff and a truckman named Brown took the goods to defendant's pier in Boston to have been placed on defendant's boat for transportation to New York. The plaintiff was in a great hurry, and there were a large number of people ahead of him. He therefore told Brown to deliver the goods to defendant, to get a 'receipt' for the same, and to deliver said receipt to

plaintiff's wife. The said Brown did so deliver the goods, and got a bill of lading in return for said goods, in which Brown was named as 'owner or shipper' and the plaintiff as consignee. At the same time defendant's agent handed Brown the release in question and told him to sign it. Brown did so. The release, of course, remained in possession of defendant. Plaintiff sought to show that he in no way authorized Brown to sign said release, but was not allowed to do so. Still the evidence does show that plaintiff merely told Brown to get 'the receipt' for the goods, upon delivering them to defendant, and to give such 'receipt' to plaintiff's wife. It may be remarked that, aside from the fact that the release recites that it is given in consideration for transporting the goods at 'reduced rates,' there is no evidence whatever that the rates were, in point of fact, in any degree reduced. There is no doubt that a common carrier may limit its liability by contract in consideration of a reduced rate for transportation. *Zimmer v. Railroad Co.*, 137 N. Y. 460, 33 N. E. 642; *Kenney v. Ry. Co.*, 125 N. Y. 422, 26 N. E. 626. Nevertheless such contract must be accepted by the shipper or his agent. The release was signed 'M. Brown,' and nothing appears in said release to indicate that Brown acted for anybody but himself. He was never authorized by the plaintiff to sign said release, nor is there anything to indicate that plaintiff in directing Brown to deliver the goods and take a 'receipt' therefor had the remotest anticipation that any such release was to be demanded by the defendant. Brown himself does not appear to have read the release, or had his attention called specifically to its provisions. He merely signed it mechanically at the bidding of defendant's agent, who says he told him to sign 'this release.' Brown was a mere truckman, as defendant's agent well knew. It seems to us that the judgment and order appealed from should be reversed, and a new trial granted, with costs to appellant to abide the event. (*Hailparn v. Joy S. S. Co.*, 99 N. Y. Supp. 464).

Duty of Carriers in Deliveries

The law of Illinois on the duty of railroads in regard to the delivery of freight, giving notice of arrival at destination, and its duties and liabilities in connection with refused freight has been succinctly stated in the case of the *Gratiot Street Warehouse Co. v. St. Louis A. & T. H. R. Co.* The case grew out of the shipment of corn, which upon arrival at destination was found to be seriously damaged. Suit was brought by the owner relying upon the conditions in the bill of lading, and the evidence showed that the shipment originated at St. Louis in the latter part of June and remained on the tracks at rebilling point about two weeks. It was contended that the cars in which the corn was shipped had leaking roofs. This contention was denied by the railroads, who claimed that the cars were in good repair, and that when the corn arrived at rebilling point it was in good condition, and that it became out of condition by being allowed to stand on the

tracks awaiting disposition. In disposing of the case the court said:

"It is the settled law of this State that carriers by railroad are not bound to deliver the goods carried to the consignee personally, or to give notice of their arrival, to discharge their liability as carriers; and that when the goods have reached their destination, if the consignee is not present to receive them, the carrier may store them safely in a suitable warehouse to await the demand of the consignee. *Chicago & Alton Railroad Co. v. Scott*, 42 Ill. 132; *Gregg v. Illinois Central Railroad Co.*, 147 Ill. 550, 35 N. E. 343, 37 Am. St. Rep. 238. When the carrier has brought the goods or the freight to their destination, it has a right to place them in a safe and secure warehouse, and its liability then changes from that of a common carrier to that of a warehouseman. When the carrier thus assumes the new duties of warehouseman, he is liable only for ordinary care and diligence in the preservation of the property. *Chicago & Alton Railroad Co. v. Scott*, supra; *Illinois Central Railroad Co. v. Carter*, 165 Ill. 570, 46 N. E. 374, 36 L. R. A. 527. Where the carrier has no depot or warehouse at the place of destination for the storage of such freight as corn, it may be warehoused in the cars on the side tracks. In *Gregg v. Illinois Central Railroad Co.*, 147 Ill. 555, 35 N. E. 344 (37 Am. St. Rep. 238), it was said: 'The law is well settled in this State that the liability of a railroad company, as a common carrier of freight, ceases upon the unloading of the goods from the car at the place of destination, and placing them in a safe and secure warehouse, or where the carrier is not required in the usual course of business, or expected, to remove the freight from the car, as in the case of grain in bulk, coal, lumber, and the like, by delivering the car in a safe and convenient position for unloading, at the elevator, warehouse, or other place designated by the contract or required in the usual course of business, or, if no place of delivery is thus designated or required, on its side track, in the usual and customary place for unloading by consignee.'" (*Gratiot Street Warehouse Co. v. St. L. & T. H. Ry. Co.*, 77 N. E. 675.)

Published Rate Sustained

The Supreme Court of the United States has laid down the doctrine that a common carrier by rail can charge the published rate in an interstate shipment notwithstanding the fact that a lower rate was quoted and inserted in the bill of lading. The case involved the shipment of two cars of coal upon which a rate of \$1.25 per ton was quoted. The shipper, relying upon this rate, sold the coal at a price having this rate in consideration. The published rate was \$1.50 more; the shipper paid the published rate under protest and sued to recover. The Supreme Court of Texas, in which State the action had been brought, held that the railroad company was liable for damages occasioned by the misrepresentation of the rate of freight

as shown by the statement of facts. The Supreme Court of the United States held that the case is ruled by the decision in *Gulf C. & S. S. F. Co. v. Hefley*, 158 U. S. 98. Relying upon the doctrine of this case, the Supreme Court of Alabama, in deciding *Sou. R. Co. v. Harrison*, 119 Ala. 539, so aptly reviewed and declared the law that the opinion of the Alabama Court was included in the opinion of the Supreme Court of the United States. In deciding the last mentioned case, the Alabama Court said:

"In *Gulf, C. & S. F. R. Co. v. Hefley*, supra, the plaintiff sued to recover damages for the refusal by the carrier to deliver goods consigned to him, after tender of payment of the stipulated charges named in the bill of lading. The goods, a lot of furniture, had been received by the carrier at St. Louis, Mo., for transportation to Cameron, Tex., at a stipulated rate, specified in the bill of lading, of 69 cents per 100 pounds, the charges amounting to \$82.80, whereas the published schedule rate in force at the time was 84 cents, and the charges should have been \$100.80; and the plaintiff, as in this case, was ignorant of the fact that the rate obtained was less than the schedule rate. It was held, in an opinion by Brewer, J., that the plaintiff was not entitled to recover. It is true that the only question discussed in the opinion was whether or not the interstate act superseded the Texas statute, which prohibited a common carrier from charging or collecting from the owner or consignee of freight a greater sum than that specified in the bill of lading, and this question was decided in the affirmative. * * * But this was not the only effect of the decision, and it is by its effect on the rights of the parties to such a contract, by whatever process of reasoning the decision may be reached, that the State courts are bound. The clear effect of the decision was to declare that one who had obtained from a common carrier transportation of goods from one State to another at a rate, specified in the bill of lading, less than the published schedule rates filed with and approved by the Interstate Commerce Commission, and in force at the time, whether or not he knew that the rate obtained was less than the schedule rate, is not entitled to recover the goods, or damages for their detention, upon the tender of payment of the amount of charges named in the bill of lading, or of any sum less than the schedule charges; in other words, that, whatever may be the rate agreed upon, the carrier's lien on the goods is, by force of the act of Congress, for the amount fixed by the published schedule of rates and charges, and this lien can be discharged, and the consignee can become entitled to the goods, only by the payment, or tender of payment, of such amount. Such is now the supreme law, and by it this and the courts of all other States are bound." (*T. & R. Ry. Co. v. Mugg, et al.*, 26 Sup. Ct. Rep. 628.)

"If the subscription price of FREIGHT was \$25 a year, I should consider it most reasonable. It is worth much more than that to me."
—A Subscriber.

IMPORTANT DECISIONS IN BRIEF

Where one made shipment on a "straight" bill of lading and drew a draft with the bill of lading attached, and the consignment was delivered to a party at destination of the same name as the consignor who was also the consignee, it was held that the carrier was not liable for the delivery; nor would it be held under a duty to know that previous shipments billed the same way had not been delivered to the party to whom the shipment in question was given. In deciding the case the court said: "Whether the consignor in the case at bar meant L. Singer, of Boston, Massachusetts, or L. Singer, of Springfield, Illinois, is not material. What a consignor in fact means if not communicated to the carrier is not material. The rights of the parties depend upon what is communicated to the carrier. *Samuel v. Cheney*, 135 Mass., 278. The carrier in making delivery is bound to follow that direction whatever it may mean under all the circumstances of the case." (*Singer v. M. D. T. Co.*, 77 N. E., 882.)

The Supreme Court of Texas has held that where an agent of a carrier wrongfully refuses to ship one's cattle by the shortest and most expeditious route, and compelled the shipper to sign a bill of lading under which the stock was shipped by a longer route, and the stock was damaged, the railroad company and its agent were both liable to suit either separately or jointly as the shipper might elect. (*Eastin and Knox v. T. & P. Ry. Co.*, 92 S. W., 838.)

A libel was brought against a trade firm as agents of steamships for certain demurrage for the detention of lighters (on which were derricks) beyond a reasonable time in the loading of certain locomotives in the steamships. The locomotives were in parts and in transferring from land to vessel there was delay to the lighters. This delay was caused by the manner in which the goods were loaded, that is the manner in which the parts were distributed. The lighters were paid for the transfer of each locomotive \$30; this amount was paid. No contract was made concerning the time within which the loading should take place, so that there was no liability for demurrage by the express contract. The court found that no doubt the goods could have been handled more expeditiously if they had been properly packed or furnished to the steamship in a different way, yet it did not appear that the steamship owners were liable for the manner in which the goods were delivered or the way in which they were packed. It appeared that the steamship people received and stowed the goods with reasonable skill and dispatch, and further that it was a mistake to send more lighters than were required to handle the machinery with such dispatch as would be required in properly loading the locomotives into the hold of the vessel. It appearing that the vessels were loaded as fast as the goods could be taken care of, the court held that the steamship owners were not liable for the demurrage of the lighters under such circumstances. (*Merritt and Chapman Derrick and Wrecking Co. v. Vogeman*, 143 Fed., 142.)

The law of Washington makes a bill of lading negotiable by indorsement for certain purposes. In an action brought against a railroad upon a bill of lading acknowledging the receipt of a quantity of shingles in Minnesota to be delivered in Washington, and no shingles had been loaded on the car named in the bill of lading, it was held that the railroad was not responsible for the fraud notwithstanding the fact that the bill of lading was in the hands of a bona fide purchaser. (*Roy & Roy v. No. Pac. Ry. Co.*, 85 Pac., 53.)

Where a charter party gave to the charterers the right to select the place of discharge, and the goods were discharged

upon a pier which subsequently collapsed, by which the goods were thrown into the water and practically destroyed, it was held that the owner was not liable. (*Rosenstein v. Vogemann*, 77 N. E. 625.)

Where a steamship ticket contained a clause limiting the liability of the vessel or its owner in the event of loss or damage to baggage to \$100, and it appeared that such clause had not been read by the passenger, it was held that the carrier was liable for the full value of the baggage. (*Smith v. N. G. L. S. S. Co.*, 142 Fed. 1032.)

A carrier is under duty to provide sufficient facilities for the prompt transportation of goods tendered to it, and will be held liable for failure so to do, whether the failure is due to a want of facilities or to a captious refusal to transport. In disposing of the matter the court said: "If it can be said that the carrier, which only has necessary equipment to handle its ordinary business for eight or nine months of the year, when business is dull and limited, has complied with the law, why may not the same excuse be pleaded by the carrier which has necessary equipment to handle its business only in the single dullest month of the year? And thus the law which imposes liability upon the carrier for failure to promptly handle and deliver freight consigned to its care becomes absolutely ineffective. Many privileges are granted the common carriers of this State by the law; but certain reciprocal obligations are imposed, and among those no duty is more important to the commercial world at large than that which requires the prompt transportation of freight and which imposes liability for any failure in that regard. The true rule in this matter, in our opinion, and we quote it for the purpose of approving it, is found in 5 A. & Eng. Ency. of Law, pp. 160, 167, 169, 256, as follows: 'The duty of carriers embraces, not only the duty to transport goods accepted by them, but to do so promptly and within a reasonable time. If there is any unreasonable delay, the carrier remains liable as insurer for the safety of the goods, and is also responsible for whatever damage may result to the shipper as a proximate consequence of the delay. But in the case of railroad and similar companies, endowed with special and unusual powers, with express view to their rendering to the public a freight and passenger service adequate to the needs of the country through which their lines pass, the law imposes the obligation to have and to furnish sufficient facilities for the reasonably prompt transportation of goods tendered for carriage, and they are liable for a failure to transport promptly, whether the failure is due to a want of facilities or to a captious refusal to carry. If it accepts goods after knowledge of its inability to transport them it is liable notwithstanding, unless the shipper consented to the delay. Where it appears that the carrier has reasonable facilities for the transportation of goods under ordinary conditions of business, and furnishes them all for the use of shippers, the fact of an unusual and unexpected press of business will excuse a delay in transportation, provided the shipper is informed of the fact at the time of shipment or as soon thereafter as it is known. But such a fact constitutes no excuse when the carrier, with full knowledge of it, accepts goods for transportation without informing the shipper, or where it appears that the carrier was derelict in his duty to have and provide proper facilities for transportation.'" (*Y. & M. V. Ry. Co. v. Blum Co.*, 40 Sou. 748.)

Where one received a shipment of cotton yarn in several cases and some of the cases were broken and damaged and the entire lot was sold as damaged goods, the consignee not examining every case, it was held that he could not recover for the loss on the theory that he had not exercised reasonable diligence in ascertaining how much of the yarn had been damaged. (*D'Olien v. N. Y. C. & H. R. R. Co.*, 90 N. Y. Supp. 649.)

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

The Louisville & Nashville has begun service on five miles of double track between Boyles and Black Creek.

The Illinois Central has secured a permit for building a new freight depot at Birmingham, and the Southern has begun work on its new freight house, which will cost about \$100,000.

After a preliminary hearing, M. B. Drennen, J. W. Leach, Earl G. Evans and J. R. Moore, of the L. & N., were bound over to the Federal Grand Jury in bonds of \$200 each on the charge of having discriminated against members of the order of Railway Telegraphers.

ARKANSAS

The Factories Committee of the Business Men's League, of Little Rock, state that the high coal prices are driving factories out of the city and will investigate for the purpose of ascertaining definitely whether the cause is high freight rates or excessive price at the mines.

Commercial travelers in Arkansas and Missouri are trying to secure a two-cent rate in those States. No action has been taken pending the reply of the railroad companies.

CALIFORNIA

There is some complaint that the Southern Pacific Company is discriminating against Sacramento in the matter of freight rates on lumber from Oregon. It is stated that it costs less to deliver a carload to San José and other southern points than it does to Sacramento, although trains conveying the lumber to these southern points pass through Sacramento.

It is again announced unofficially that terminal rates for San Pedro and East Pedro will become effective January 1.

At one time last month about 7,000 loaded cars were lying idle in and around San Francisco. This number is about 20 per cent. of the freight rolling stock of the Southern Pacific.

The freight blockade at Oakland is about at an end, and it is expected that all classes of goods will soon be moving freely in all the Southern Pacific yards outside of San Francisco.

COLORADO

A material reduction in freight rates from Colorado common points to common points in Montana has been announced by the Union Pacific, Denver & Rio Grande, Colorado Midland, Santa Fé and the Colorado & Southern railroads. The rates became effective August 21:

CLASS RATES.					
	1st.	2d.	3d.	4th.	5th.
Old rate	200	172	140	120	100
New rate	180	152	126	108	90
	A.	B.	C.	D.	E.
Old rate	92	80	72	60	52
New rate	90	72	64	44	36

COMMODITY RATES.

	Old Rate.	New Rate.
Beer	\$.64	\$.60
Brick	.43	.34
Cement	.40	.37
Dry goods:		
Cotton piece goods	2.00	1.80
Packing house products	1.00	.90
Soap and soap powder	.84	.80

The Harriman officials and the Trans-Missouri Freight Association held a conference recently in Denver. The Harriman men met for the purpose of

changing the operating rules of the railroads composing the system so that they will conform to the rules adopted by the American Railway Association. The freight men considered a revision of in and out rates in Colorado and Utah.

The Colorado & Southern road is preparing a new tariff for classified freight in the Northern Colorado district. The new flat rate is the same to all those points and is: First class, 35 cents per hundred; second class, 25 cents per hundred; third class, 20 cents per hundred; fourth class, 15 cents per hundred. Showing the difference, the present rate is to Fort Collins, 50, 44, 38 and 32; to Loveland, 42, 37, 32 and 27.

CONNECTICUT

A freight service by water is to be established between Hartford and Springfield, Mass.

The steamer "Pequot" has been placed on the Norwich Line for freight duty between New London and New York.

A strike of switchmen in the New Haven yards of the N. Y., N. H. & H. R. R. tied up freight to some extent about the middle of the month, but the strike ended abruptly and trains since have been moving as usual.

DELAWARE

The new freight yards of the Pennsylvania Railroad Company at Todds Cut are almost ready for use. They contain about ninety-five tracks, and as soon as the ground settles sufficiently to bear the weight of heavy locomotives and freight cars, the yards will be put in use.

FLORIDA

The congestion of freight at Jacksonville, while somewhat relieved, is still very serious. Committees from the Board of Trade have been in conference with the transportation officials and are making some progress, although it is not improbable that the Florida Railroad Commission may be obliged to take a hand in straightening out the tangle. The transportation companies place the blame on the lumbermen, while the lumbermen hold the transportation companies responsible.

It is stated that the Clyde Line will run two new ships this month between New York and Jacksonville, to aid in relieving the freight congestion there.

GEORGIA

The Railroad Committee of the Georgia House of Representatives reported against passage of the bill introduced by Senator W. S. McHenry, of Floyd, to lease the Western & Atlantic R. R. for a term of six years, beginning at the expiration of the present lease, in 1919.

The L. & N. and Mayor Woodward, of Atlanta, have clashed over an ordinance restricting the railroad in the use of its yards, on East Hunter street, Atlanta. It is probable that the matter will eventually be settled by the courts.

An injunction secured by Gershon Brothers has stopped all work on the new \$400,000 freight house which is being built on Waverly Place, Atlanta, by the L. & N. The injunction stops the city of Atlanta from taking any further steps toward giving possession of the street to the railroad.

The railroad rate clerks of the Southeastern territory held their regular semi-annual meeting in the offices of Joseph Richardson, in Atlanta.

The territory comprised by the representatives in session includes the States of Georgia, Virginia, North Carolina, South Carolina, Florida, Alabama, Mississippi, Tennessee and Kentucky. The rate clerks meet every six months to discuss routings, change of rates, harmony of action, excursions and other kindred matters.

Among those present at the meeting were W. I. Lightfoot, of Nashville, Tenn., of the Nashville, Chattanooga & St. Louis Railway; J. B. Parker, of Wilmington, N. C., of the Atlantic Coast Line; W. J. Earls, of Washington, D. C., of the Southern; C. A. Merrill, of Chicago, Ill., of the Illinois Central; F. C. Pogue, of Savannah, Ga., of the Central; Carl Lieber, of Louisville, Ky., of the Louisville & Nashville; C. C. McMillin, of Augusta, Ga., of the Georgia Railroad; G. D. Langston, of St. Louis, of the Mobile & Ohio, and J. H. Higgins, of Atlanta, of the Atlanta & West Point.

The Macon Chamber of Commerce will undertake to raise \$25,000 for the purpose of establishing a permanent line of steamers on the Ocmulgee River.

The Columbus Board of Trade reports that during the past month railroads have made 770 freight rate reductions to Columbus shippers.

The Armour Refrigerator Car Line has paid damages to the peach growers in various Georgia districts who sustained damages on account of that company's failure to supply refrigerator cars as contracted for to handle the peach shipments. The establishment of a line of steamers between Florence, Sheffield, Tuscumbia and Paducah is being vigorously agitated.

Shoe dealers of Augusta are endeavoring to secure better freight rates on shoes shipped there from New York and Boston. The freight rates on shoes for Augusta is 11 cents per 100 pounds greater than the rates to Macon and Atlanta.

The contract has been let for the new freight depot of the Seaboard and the Atlanta, Birmingham & Atlantic Railroad at Atlanta.

ILLINOIS

The Illinois Tunnel Company inaugurated its freight service in Chicago on August 15. The Tunnel Company is now equipped with sixty-seven electric locomotives and four hundred trucks. There are being built an additional complement of fifteen locomotives and two hundred and fifty trucks. The company has forty receiving stations and is connected with nine regular railroads. The railways now ready for service are the Erie, Alton, Rock Island, Wabash, Santa Fé, Great Western, Monon, Baltimore & Ohio, Milwaukee & St. Paul, and contracts have just been entered into between the tunnel company and the Chicago and Eastern Illinois and the Illinois Central.

The long standing controversy involving the differential between the Gulf and the Atlantic seaboard on export grain from Missouri River points was adjusted at a special meeting of the executive officers of the Western trunk lines' committee. This differential has been a troublesome factor in export grain ratemaking for a number of years.

According to the provisions of the agreement, which expires April 1, 1907, the Gulf lines receive a differential of 5 cents on all grain from Kansas City and 4 cents from Omaha. None of the published tariffs shall include the f. o. b.

charge at either the Atlantic seaboard or the Gulf.

The abolition of the absorptive rates at the Gulf is considered one of the most important achievements of Western trunk line committee conferences. Another feature of the adjustment is the extension of the differential to cover wheat which has hitherto remained outside the range of discussion.

When the new tariffs go into effect September 1 the rate on wheat from Kansas City to Baltimore will be 22¼ cents; corn, 21¼ cents, while the rate to the Gulf is fixed at 17¼ and 16¼. While the rates to the Atlantic seaboard from Omaha are identical with the tariff from Kansas City, the Gulf quotations are 18¼ and 17¼ cents. The adjustment was effected on the basis of locals from Kansas City and Omaha to Chicago and the Mississippi River and points east thereof. The Gulf lines will publish their own tariffs.

In making the adjustment on the basis of locals breaking on Chicago and St. Louis, the railroad men have recognized the contention of the Chicago Board of Trade, which has long maintained that the advantage held by Missouri River points should be removed.

Twenty-six of the forty new engines of the Illinois Central have been delivered at Freeport by the American Locomotive Works, of Schenectady.

INDIANA

The Terre Haute Traction & Light Company has established its freight service between Terre Haute and Sullivan.

The shippers of grain in Indiana believe that before the grain movement of the fall and winter has fairly set in there will be a scarcity of cars; even now some difficulty is experienced in obtaining proper equipment.

KANSAS

The Drovers' Shipping Law which allows all drovers accompanying live stock to market free transportation to the point where the stock was loaded is to be tested in the Kansas Supreme Court. The first case under the law was filed by Sinclair & Wallace, shippers at Kincaid, Anderson County. It is an appealed case coming from a justice court, and the law has been upheld by the justice and district court judge.

June 22, 1905, Sinclair & Wallace shipped a car of hogs to Kansas City. Mr. Wallace accompanied the stock, but was refused free transportation back to Kincaid. He paid \$2.54 railroad fare to the conductor at Kansas City.

Some time after the shipment the firm decided to try to collect from the railroad company, the Missouri, Kansas & Texas, for the cash fare paid, and a suit was brought in a justice court. Chapter 354 of the Session Laws of 1905 provide that a drover in taking stock to market is entitled to free transportation to the destination on the same train with the stock, and a free pass back to point of origin on a regular passenger train. This law had gone into effect twenty days before the shipment was made. The law provided that if the railroad company refused the return pass the shipper was entitled to double the cash fare paid and attorney's fees. Sinclair & Wallace sued for \$5.10 railroad fare and \$35 attorney's fees. The justice gave them a judgment for \$20. The railroad company appealed the case to the district court and there a judgment was given Sinclair & Wallace for \$48.62, including the court costs.

It is stated that the Kansas City, Mexico & Orient Railroad, now building southward to the port of Topolobampo, Mexico, has closed traffic agreements with the Gould lines by which all freight originating on the Gould lines in the United States and destined for points in the Orient will be routed via the Kansas City, Mexico & Orient road to Topolobampo and thence via the Hamburg-American line of boats plying from that port. While theoretically in effect now, it is said that the compact will go into actual and practical agreement about the first of next year, by which time the Kansas City, Mexico & Orient road will be in position to accept shipments for direct exportation via Topolobampo.

From the same source it is learned that the Goulds have taken a substantial interest in the Stilwell road and will close other traffic arrangements with it relative to freight destined to Mexican points. It is known that on some of the trips which Stilwell made to Mexico in company with prospective investors he carried along representatives of the Goulds, who paid close attention to conditions. Some of the Texas representatives were along on one or two of these trips, and it is highly probable that the Kansas City, Mexico & Orient road will operate in conjunction, to a certain extent, with the International & Great Northern in Texas.

Early in the present month the Kansas railroads operating in the salt field reduced the freight rate on salt to the cattle country, but the salt companies took advantage of the reduction, according to reports which have reached here, to raise their price sufficiently to absorb the reduction for the benefit of the cattlemen in the western part of the State, but the indications are that the salt companies will derive more benefit from the reduction than the cattlemen.

L. P. Worden, of Syracuse, said a short time ago that the reduction to his station in freight rate was 7 cents a hundred pounds, and that the salt companies promptly raised the price of salt 8 cents a hundred. This is denied by Frank Vincent, of the Hutchison Salt Company, but Mr. Worden presents freight bills dated last December and July 9 of this year which seem to bear out his statement. The reduced freight rate went into effect July 2.

E. P. Ripley, president of the Santa Fé, has issued an address to the people of Kansas in which he protests against the agitation in that State for a maximum 2 cent passenger rate law. President Ripley points out that his company is a little more than ten years old, and in that time has largely rebuilt and re-equipped the entire Santa Fé system, spending in Kansas alone for this purpose not less than \$17,000,800, part of which was taken from earnings that might have been distributed to stockholders.

The road, he says, is fully worth today the amount of its total capitalization. In these ten years, he points out, the preferred stockholders have received total dividends of only 28¾ per cent., or 2.87½ per cent. per annum, and that common stockholders have received only 21½ per cent., or a little over 2 per cent. per annum.

Passenger rates in Kansas are now as low as they are in any State west of Ohio and Michigan, notwithstanding that Kansas has only eighteen people to the square mile, while Illinois has eighty-six, Iowa forty and Missouri forty-five. Many passenger trains in

Kansas, he says, are now run at a loss, and solely for the accommodation of the public.

By a reduction of passenger rates in the State, Mr. Ripley declares, interstate rates would have to be reduced, so that for every dollar saved by Kansas the railroad company would lose several thousand.

LOUISIANA

At the meeting of the traffic officials of the New Orleans initial lines held at the St. Charles Hotel, a general discussion of the practical workings of the new rate bill was had and an interchange of views as to the practical effect of the bill upon the conditions surrounding the New Orleans lines.

The meeting also considered the question of a general interchange of switching arrangements between the New Orleans lines, a matter that had been under consideration for some time, and it was decided that it was to the interest of the public for all the lines to agree to perform switching service for each other as to all industries in the city of New Orleans reached via any line, it being concluded that this would insure prompter and better service and prevent a congestion of cars during the busy season. Under this arrangement, each and every line in New Orleans will switch for each other and the present system of paying a drayage or cartage charge will be abolished. It is believed that this arrangement will be of great benefit to the shipping interests at New Orleans, as it insures prompt delivery of cars and prevents a congestion of equipment in the yards of the railway companies during their busiest season. This arrangement became effective on and after August 27, 1906.

MASSACHUSETTS

The Springfield freight yards of the Boston & Albany Railroad will see an increase of business after September 1, when the Fishkill transfer station will be abolished. Hitherto, freight for the New York, New Haven & Hartford Railroad from the West has been sent from Albany to Fishkill over the New York Central, and thence over the New Haven road, while freight for the West has been sent to Fishkill for transferring to the New York Central. Hereafter all the New Haven's freight for and from the West will travel over the Boston & Albany Railroad to and from Albany. The New Haven road will transfer its freight at Springfield, Worcester, Pittsfield, State Line and other points, and, although most of the extra business for the Boston & Albany will consist of through freight, still it is expected that there will be a large increase in local freight business for the local yards to handle. It is believed that between 300 and 400 extra cars a day will be the amount of the extra business for the Boston & Albany, and that busy days will see at least 1,000 extra cars.

MICHIGAN

The steamboat and railroad war in Western Michigan for the Oceana fruit crop resulted in considerable benefit to shippers by reason of low rates and quick service.

Manager C. A. Floyd, of the Holland Inter-Urban Line, of Grand Rapids, Mich., says that 30 per cent. of the gross receipts of the road comes from the freight business.

The Grand Trunk will build a new freight house at Battle Creek at a cost of about \$100,000.

MINNESOTA

A syndicate of Duluth capitalists is planning the construction of a boat that not only will be the largest freighter on the Lakes but will be unsinkable. The size of the vessel is to be 650 feet, and she would carry from 15,000 to 17,000 net tons cargo. Compressed air will be applied to make the vessel unsinkable. This will necessitate a double hull. The cost of the vessel will be about \$600,000.

Through a joint freight tariff filed with the Interstate Commerce Commission at Washington, and effective August 17, the Great Northern independently has granted the milling-in-transit rates which Minneapolis millers have been requesting for several years from Southern Minnesota and South Dakota points to Chicago.

The new tariff means practically a reduction of 2½ cents and more per 100 pounds in the shipment of grain consigned to Chicago milled in transit at Minneapolis. At present Minneapolis does not get any milling-in-transit rates from the points included in the tariff, and the Minneapolis millers are therefore at a disadvantage in competing with millers in the territory interested from which milling-in-transit rates are available to Chicago.

The new rates are to govern shipments of wheat in carloads from stations named on the Great Northern Railway, the Willmar & Sioux Falls Railway, and the Duluth, Watertown & Pacific Railway to stations on the Chicago, Burlington & Quincy Railway in Illinois (except south of Chapin and Jacksonville, Ill.), also stations Davenport to Clinton, Ia., both inclusive.

The conditions of the tariff are as follows:

"Wheat may be milled in transit at Minneapolis or at any other directly intermediate point on the Great Northern, Duluth, Watertown & Pacific or Willmar & Sioux Falls Railways without transit penalty (except published and customary rules governing switching charges at milling point), provided wheat is consigned through to Chicago from originating points and through rate paid in full at milling point; it being understood that Chicago will be used as destination for wheat to be milled in transit, which transit may apply on the product destined to stations on Chicago, Burlington & Quincy Railway in Illinois (except stations south of Chapin and Jacksonville, Ill.); also stations Davenport to Clinton, Ia., both inclusive.

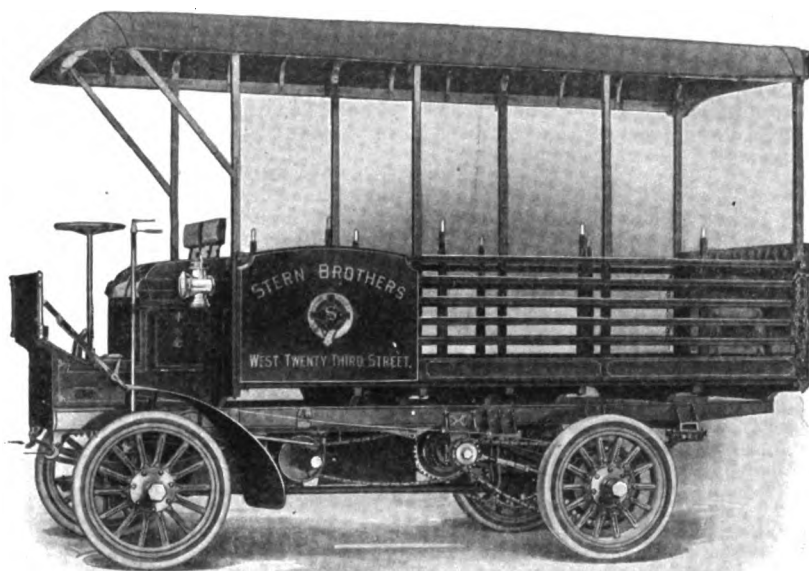
"Reconsignment of wheat at milling point or transfer of transit from the original owner or consignee of wheat will not be permitted under this tariff (that is to say, on arrival of wheat at milling point no change can be made in its destination or consignee for the purpose of creating transit), neither will such transit be accepted in payment of freight charges on wheat from milling point to Chicago, etc."

President A. B. Stickney, of the Chicago Great Western Railroad, sent a letter to the Board of Directors of the Minnesota Transfer Company warning them against giving the Armour Company free switching privileges to and from the Armour Stock Yards. The offer was made as an inducement to Armour & Co. to establish their new packing plant at New Brighton, northeast of St. Paul.

Mr. Stickney says that, according to the Interstate Commerce Act, such an offer, if accepted, would subject the di-

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rectors to a fine of from \$1,000 to \$20,000, and would subject Armour & Co. to similar punishment if the company accepted the offer. Mr. Stickney says such an act would be criminal in favor of the Armour Stock Yards as against the United Stock Yards, located at South St. Paul.

Shortage of cars is seriously interfering with the lake shipping business, and as a result, vessels are being held longer in unloading at terminal points, such as Cleveland, Buffalo and other places.

MISSISSIPPI

In several of the larger towns of the State, notably Jackson, Meridian, Vicksburg and Natchez, the Louisiana Car Service Association is endeavoring to collect alleged delinquent demurrage charges on shipments dating several years back.

It is stated that the claims have not been heretofore presented because of a case pending in the Supreme Court, styled *C. J. Searles v. Y. and M. V. road*, from Warren County, involving the question of demurrage claims, and which was decided in favor of the railroad company at the recent Supreme Court term.

It is quite likely, however, that many of these claims will be contested in the courts, notwithstanding the Searles decision, the substance of which was that the Louisiana Car Service Association has not violated the Anti-Trust laws of this State.

MISSOURI

On September 1 the Chicago & Alton Railroad Company, and the Chicago, Burlington & Quincy Railway Company will establish joint freight service between Kansas City and St. Louis, and East St. Louis, Ill. (in both directions), via Mexico, thus making the shortest route between these terminals and enabling these roads to give quick service.

Kansas City millers are again the center of the stage in the Western grain rate situation. From St. Louis came the report that they had threatened to bring suit to enjoin Western railroads from restoring normal proportional rates on grain shipped from the Missouri River to Chicago August 10, as provided in the agreement reached at the recent conference which settled, at least temporarily, the Western grain rate war.

The St. Louis Municipal Commission and the Eastern lines have agreed upon a drayage plan. Chairman Hodgdon, of the railroad committee, presented the following statement:

"St. Louis, Mo., Municipal Bridge and Terminals Commission, St. Louis, Mo.:

"GENTLEMEN—In view of the apparent misunderstanding of arrangement for the application of St. Louis rates via wagon transfer company, as announced by one or more individual roads, the following statement of the proposed plan is submitted.

"The proposed plan for the application of St. Louis rates for direct delivery is as follows:

"1. That the St. Louis rates shall be published to apply to and from St. Louis, Mo., in connection with the transfer company, under agreement for division of the through rates.

"2. The St. Louis rates to apply at the recognized depots of the transfer company, as at present; and, also, at St.

Louis, Mo., for direct handling, at the option of the owner of the freight.

"3. The transfer company to add to the St. Louis rate their charge for drayage to or from store door; this to be a separate charge.

"4. If the shipments are delivered or received through the depot the cost of depot service to be paid by the railroad, under agreement with the transfer company.

"5. The transfer company to pay the expense incident to getting the freight across the river; and to continue to act as agent for the railroads, performing the same duties as in the past, arrangements for divisions to be made only under above conditions.

"6. It is understood that the drayage charge of the transfer company to be added to the St. Louis rate for direct delivery shall be equivalent to the drayage charge to or from all St. Louis depots.

"7. It is understood that the term 'transfer company' as used in this memorandum is applicable to the St. Louis transfer company and Columbia transfer company, and the proposed arrangement may be made with either or both.

"8. Any transfer company with whom the defined arrangement for St. Louis rates is made must not be owned or controlled by shippers, and it is understood that the two transfer companies named above are not so owned or controlled at present.

"9. It is understood that, to protect the St. Louis bill of lading principle, as per the previous understanding with the Municipal Bridge and Terminal Commission, no freight shall be delivered through the transfer companies direct to the consignee against the wishes of the consignee.

"Respectfully submitted,

"W. M. HODGDON,

"For the Committee."

Vice Chairman Whitelaw, of the commission, after discussion with the members and the railroad committee, made the following announcement:

"The Municipal Bridge and Terminal Commission acknowledges receipt of memorandum of arrangement for handling freight between St. Louis and East St. Louis by wagon transfer, as submitted by committee representing Eastern lines. The commission believes the arrangement, as outlined, protects the interests of the St. Louis business public and gives the memorandum its approval."

MONTANA

The Great Northern and Northern Pacific have reduced freight rates in Montana about 10 per cent. As an example of the reduction, the rates from St. Paul to Helena, both old and new, follow: First class freight, reduced from \$2.50 per 100 pounds to \$2.25; second class, from \$2.15 to \$1.90; third class, from \$1.75 to \$1.58; fourth class, from \$1.50 to \$1.35; fifth class, from \$1.25 to \$1.13; class "A," from \$1.15 to \$1.13; class "B," from \$1 to 90 cents; class "C," from 90 cents to 80 cents; class "D," from 75 to 55 cents, and class "E," from 65 to 45 cents.

NEBRASKA

War is declared between the Rock Island Railroad and the Omaha shippers.

The Rock Island-Frisco system has

made an unloading allowance of 1¼ cents to grain shippers at Kansas City as against nothing at Omaha, and has reduced the rates on grain from Kansas City to Memphis from the previously agreed upon figure of 12 cents to 9 cents without making any reduction whatever from Omaha.

The Omaha shippers, in turn, have taken steps to declare a boycott, absolute and complete, against the Rock Island-Frisco system.

This condition, quite suddenly brought about, came to a head from the announcement, publicly made, in Chicago by officials of the Rock Island-Frisco system that the 1¼ cents unloading allowance—which is but another name for the recently abolished elevation allowance—had been given to Kansas City shippers and would not be given to Omaha grain shippers. This means that any grain shipped to Kansas City from Nebraska and Kansas shippers gets a better rate than Omaha by just that much.

Dan Reed, assistant section foreman of the Burlington Railroad, who was in charge of the gang which was ordered to burn the two cars of incriminating records of the road, told the United States prosecuting attorney all that he knew of the destruction of the records. He told of being ordered into the car by Roadmaster Burns, of breaking open two barrels of kerosene and of saturating the papers. Afterward the papers were fired and burned. Reed has left the company's employ.

NEVADA

Probably no one subject for what is termed imperative legislation is receiving more attention at the hands of the press of Nevada than that of freight and passenger rates. In 1865 the Legislature passed an act which prevented railroads from charging more than 10 cents a mile for passenger service, and more than 20 cents a ton per mile for freight.

Under this statute, the railroads have been charging, it is claimed, all the traffic would bear, thereby retarding development. Practically all the branch roads in the State still charge 10 cents a mile for passengers, and the local freight rates are placed at a figure just low enough to make freighting by teams unprofitable, though in a number of sections freighting outfits are still run in competition with the railroads.

Following the visit of Senator Clark to the Pioche camp, the purpose of his visit being to inspect the mines to which he contemplates building a railroad from Caliente, on the San Pedro, Salt Lake & Los Angeles road, comes the official announcement that work is to begin immediately, and that before winter trains will be running to the principal mines of the district. The new road will follow the old grade that was built and abandoned many years ago. Heavy steel will be laid. All the mines of the Nevada-Utah Company and the other shippers will be reached.

NEW HAMPSHIRE

Not for many years has a campaign been waged in New Hampshire with as much vigor as the one now in progress. The charge made by Winston Churchill that the State is under the absolute domination of the Boston & Maine Railroad, a charge which is earnestly supported by ex-Senator William E. Chandler, is being controverted by Lucius

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Tuttle, president of the railroad, who states that Mr. Churchill is exercising his talent for fiction in politics.

NEW JERSEY

The Central Railroad of New Jersey, under its new rules, holds freight free of charge three days, Sundays, legal holidays and date of arrival not included.

The Newark Tax Board has raised the assessment on railroad properties from 50 to 400 per cent.

NEW YORK

It is reported that the Delaware & Hudson will build a new freight house at Schenectady. Options on lands for yards have been secured.

It is stated that the Red Hook and Bay Ridge Channel will be ready for the use of big ships months before the end of the contract signed.

The New York Central will build a freight house at Buffalo, on Tonawanda street.

Officials of the Vacuum Oil Company, of Rochester, will make a legal fight to prove that there has been no violation of the Interstate Commerce law by them. The matter may come up in the next session of the United States District Court, which will be held in Lockport next October.

The Federal Grand Jury for the Western District of New York returned indictments against the Standard Oil Company of New York, the Pennsylvania Railroad Company and the Vacuum Oil Company of Rochester, for violations of the Interstate Commerce law.

Spencer Kellogg's suit against the local elevator and railroad combine, in which he recovered heavy damages through proving that they conspired to drive his elevator out of business by the railroads giving rebates to the Western Elevating Association, will be carried to the Court of Appeals. The Delaware, Lackawanna & Western Railroad, one of the defendants, filed with the county clerk an undertaking on appeal to the Court of Appeals from the decision of the Appellate Division sustaining the verdict in Kellogg's favor given at the trial term of the Supreme Court about a year and a half ago.

Six more indictments were presented to Judge Hough in the United States Circuit Court by the Federal Grand Jury as a result of its investigations into sugar rebate matters. This makes sixteen indictments in all that are now pending against the sugar trust, so called, and various railroads and carrying companies, as well as against certain officials of the transportation companies.

After handing in the indictments the

Grand Jury was temporarily dismissed, but United States District Attorney Stimson says it will be called together the latter part of September and will probably not be discharged until the fall term of the criminal branch of the United States Circuit Court opens on Wednesday, October 10.

Through the efforts of the Albany Chamber of Commerce, a new freight line has been placed in operation between New York and Albany. The headquarters of the line in New York City are at Pier 6, East River, and the management is in the hands of G. P. Simmons. The Albany end of the line will be at 114 State street pier, and will be looked after by Frederick L. Geer. At the start two boats per week will be run from New York.

NORTH CAROLINA

The Greensboro Chamber of Commerce has authorized a committee to see that there is no discrimination in freight rates against that city.

A car accountant's office has been established at Spencer by the Southern Railway Company, the creation of which was made necessary by the handling of the thousands of freight cars at this point.

OKLAHOMA

W. O. Cromwell, Attorney General of Oklahoma, has begun his investigation of railroads in Oklahoma. This is at the suggestion of Governor Frantz, the object being to ascertain whether any road has violated its charter by discriminating in freight rates.

The new line of the Santa Fé Railroad from Davis to Sulphur Springs, I. T., will be opened the first of September, according to the statement of Division Freight Agent Teasdale to the Chamber of Commerce. It will reduce the mileage by rail from this place to the famous health resort from 246 to 85 miles.

The reduction in freight rates will also be an item of considerable note. Following is a table showing what they will be when the new line is opened and what the reduction will be:

Classes 1, 2, 3, 4, 5, present rate, 73, 62, 51, 44, 36; new rate, 38, 32, 26, 23, 18; reduction, 35, 30, 25, 21, 18.

The day that the line is opened there will be a large excursion from this city to the resort. The material change in the rates on the first five classes will be of great importance to Oklahoma City jobbers who, by the low rates will control the jobbing shipments to that place.

The Northeastern Oklahoma Grain Dealers' Association held its annual meeting at Blackwell, closing with a big banquet. The business sessions were devoted mainly to a discussion of freight rates, and a committee was appointed to

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OREGON

The Commercial Club of St. Johns has made a formal demand on the O. R. & N. Company for relief of the freight congestion at that point.

Farmers on the upper Columbia and Snake rivers are making preparations to send their grain to Portland by the water route. Warehouses on both sides of the streams are being built at convenient points. In other localities there are being erected huge platforms, on which wheat will be piled to await the arrival of steamers to take it to tide-water.

The Oregon Electric Railway Company is entering the Willamette Valley south of Portland with an electric road constructed for the handling of freight, as well as passengers. This road opens up a rich territory in which is Salem, the capital of Oregon. The first section of the railroad will be 50 miles in length and will connect Portland with Salem. It will be of 70 pound rails on rock ballasted roadbed with a maximum grade of 2.2 per cent. and a maximum curvature of 5 degrees. A part of the 50 mile line will consist of a tangent of 26 miles, with practically no grade.

Of considerable local interest is the new rate on hops from Northeastern terminals to all Eastern definite territory of the Transcontinental Freight Bureau. The modification of the present \$2 rate, in any quantity, is announced by the Northern Pacific freight offices. Effective August 25, hops may be shipped from the Northwest for \$1.50 per 100 pounds in carloads having a minimum weight of 20,000 pounds, while lesser quantities may be handled at the present \$2 tariff.

PENNSYLVANIA

The agitation for laws giving trolley companies the right to carry freight, and for a uniform two cent fare continues. The fight is being led by the State Board of Trade.

The Kansas City Southern will build a new freight station at Pittsburg.

The Pennsylvania Railroad Company has made elaborate plans to build the largest freight yards on the system at Hollidaysburg, entailing the expenditure of \$3,000,000 and upwards. It has purchased \$500,000 worth of lands and has already been working two years on the yards. It will require about eighteen months more to complete the work. When finished the yards will have about 100 miles of track and will handle all the slow and ordinary freight passing East and West over the main line. The fast and perishable freight will continue to be handled in the Altoona yards, which are now overcrowded.

Plans have been drafted by the Pennsylvania Railroad Company for improvements along the Delaware River front to cost more than \$3,500,000, to care for the increasing import and export business, upon the condition that the city will widen Delaware avenue between Vine and Callowhill streets and provide more space for the railroad company's proposed improvements between Washington avenue and Federal street. It was officially confirmed at the offices of the railroad recently that these plans were drafted more than two years ago, but have been held in abeyance pending action on the part of the city.

After thirty days' experimenting the Delaware, Lackawanna & Western Railroad has abandoned freight trains of

sixty cars between New York City and Scranton, and will hereafter use the twenty car train with one engine.

TENNESSEE

The Mobile & Ohio Railroad is preparing to spend \$1,000,000 in and near Jackson, Tenn., as well as doubling its tracks from Jackson to Corinth, Miss. Since this announcement was made any amount of speculation has been indulged in about the plans of the Southern and M. & O. with respect to West Tennessee and as far east as Nashville, in fact.

An aggressive demand for a better freight rate to Bristol will be made upon the railroads at once. Bristol is discriminated against in the matter of freight rates and it will soon be placed under the "Virginia Cities" classification, declare the shippers, who have taken the matter up. The rate to Bristol from the Pacific Coast, for instance, is 81 cents, whereas the rate to any of the Virginia cities, including Norfolk, being only 75, they are taking the "Virginia Cities" rate.

At the meeting of the Lumbermen's Club, of Memphis, held at the Hotel Gayoso, a resolution was passed protesting against a new minimum weight set for cars of lumber by the Missouri Pacific Railway.

The committee of five, consisting of George C. Ehemann, E. E. Goodlander, James E. Stark, S. C. Major and John W. McClure, was appointed, with authority to act in conjunction with other organizations and confer with the officials of the Missouri Pacific Railway, with a view to having the former basis of minimum weight restored.

TEXAS

Advices received from Chicago at the general freight offices of the Santa Fé indicate that a big change in freight rates applying between Gulf and Cuban ports will soon become effective.

The business men are rejoicing over the fact that both the Frisco and Santa Fé have changed the common point territory so that the same territory affected by the change on July 15 will be restored to the common point privileges. The wholesale men are especially rejoicing, as it meant much more to them than any one else. The change is a very important one to West Texas and will be the means of saving many thousands of dollars to this section.

The cattlemen of Texas and the Southwest are doing some hard work in an effort to obtain a reduction in live stock freight rates. There was a meeting held of representatives of the live stock industry in Kansas City a few days ago to agree upon some plan of action, and it was stated after the adjournment of that meeting that arrangements were being made to make a test case on existing rates for submission to the Interstate Commerce Commission under the new law, but later developments indicate this is only to be done as a dernier resort. The stockmen have another plan which they are going to first try, and that is to appeal to the railroad commissions of the various States having such tribunals, and endeavor to have those bodies exert an influence with the railways in the direction of desired reductions. In other words, it is to be a campaign of influence and moral suasion with the railroads, instead of a direct appeal to the Interstate Commerce Commission except as a last resort.

UTAH

C. H. Griffin, commissioner, Utah Car Service Association (storage department), has issued a statement to the effect that an agreement has been entered into by the Denver & Rio Grande Railroad, Union Pacific Railroad, Oregon Short Line Railroad and the Nevada & California Railway, that a storage charge will be made on all less than carload consignments of freight held in or on the warehouses, cars, platforms or grounds more than forty-eight hours awaiting disposition of consignee or consignor at the rate of 1 cent per 100 pounds or fraction per day, Sundays or legal holidays excepted, subject to a minimum charge of 25 cents for each consignment.

VERMONT

Two suits against the Central Vermont Railroad Company have been brought by Attorney General C. C. Fitts in behalf of the State of Vermont on account of alleged illegal freight charges.

The first suit, which is for \$10,000, alleges that excessive freight tariffs have been charged, and the second for \$5,000 damages demands the return to the State of amounts alleged to have been collected in excess of the regular rates.

Attorney General Fitts alleges that the State has been compelled to pay higher rates for all coal purchased and used by the insane asylum at Waterbury than other parties have paid. In particular it is charged that the State has been compelled to pay 40 cents a ton more than a certain coal dealer in Ogdensburg, N. Y., has had to pay for shipping coal over the railroad line.

The action is returnable at the September term of the Washington County court.

VIRGINIA

The Chesapeake & Ohio has instituted condemnation proceedings on property located in Seventeenth street, Richmond, to be used for freight depots.

The Norfolk & Western Railroad will be made party defendant at the next term of the Law and Chancery Court in an action that will be instituted by quite a number of large coal consumers, patrons of the railroad, as a result of alleged discrimination in rates. It is understood that a very large sum is involved.

WASHINGTON

The O. R. & N. Company has made a rate of 5 cents per hundred on hay from Weston to Walla Walla, a reduction of 4 cents a hundred or 80 cents a ton. This is a substantial concession to the mountain hay men, who might otherwise have hauled their celebrated product by team to Walla Walla.

WISCONSIN

Shippers of La Crosse have won an apparent freight rate battle, and by the victory they will make a decided commercial gain in Northern Iowa, Southern Minnesota and in Dakota. The victory was won through the efforts of the Manufacturers & Jobbers' Union, which has been insistent in its desires to place the manufacturers and jobbers of La Crosse on a better footing in competition with the shippers at Milwaukee, Chicago and the Twin Cities. Announcement has been received from the Chicago & Northwestern road that an agreement with the Great Western road had been reached by which tariffs desired by La Crosse will be secured.

HEARINGS AND RULINGS BEFORE STATE COMMISSIONS

GEORGIA

The Railroad Commission recently gave a hearing for the purpose of determining whether the Atlanta & Northern Railway Company, an electric line operating between Atlanta and Marietta, and transporting both passengers and freight, should come under the jurisdiction of the commission. The company contends that the Georgia laws except street railways from the jurisdiction of the commission. The point of contention is whether the Atlanta & Northern is a street railway after it gets outside of incorporated cities and towns. The company's rates are the same as those of the steam railways.

The commission has received a petition from the merchants and citizens of Boston, asking for a reduction in freight rates which are now in force by the Atlantic Coast Line and the Georgia Northern Railroad, on all classes of merchandise transported to Boston. The railroads reply that Boston is a non-competitive point and the merchants are not entitled to any lower rates than they now have.

INDIANA

The commission recently concluded at Evansville an investigation into the freight car service at that place. Considerable testimony against the practices of the Louisville Car Service Association was heard, and the matter will be decided later by the commission.

The commission has handed down a decision by which the Vandalia Railroad Company will be compelled to make a general reduction of almost 33 1-3 per cent. in the rates charged for all classified freight handled in Indianapolis west of the Indiana line. This decision is regarded as a signal victory for Indianapolis manufacturers and wholesale merchants and is expected to be followed by an investigation of a number of other railroads, which are said to be charging an exorbitant rate.

The decision against the Vandalia line was the outcome of a suit filed with the Railroad Commission by Schnull & Co., alleging that the Vandalia line was charging too high a rate for freight shipped to points in Indiana along its lines west of Indianapolis.

The Evansville Oil Company has filed a petition with the commission charging the Louisville & Nashville Railroad Company with discriminating against it in favor of the Standard Oil. The company alleges that the railroad company discriminates by making a rule that oil for points South can be shipped only one day in each week, and for Western points only two days in each week; that this enables the Standard to make shipments to points of distribution at more frequent intervals, and is thus a discrimination against the oil company and the people of Indiana. It is charged that such a rule is not in force at other points of distribution, and this, too, constitutes a discrimination.

IOWA

State Railroad Commissioner N. S. Ketchum is making an investigation of the stone quarry business and the hay industry. He is endeavoring to ascertain why there are so many idle stone quarries over the State and why so much hay is going to waste, and to ascertain especially whether or not the present Iowa freight rates on stone and

hay has anything to do with the conditions that prevail.

When it is desired to reduce the freight rate on an article, the article is taken out of one class of freight and placed in one with a lower rate. Articles are classified differently from year to year, but the rates for a class as a whole remain fixed. By thus changing the freight rates the lower rates on the tonnage that was shipped during the year 1905 will mean a saving to the people of Iowa of over \$600,000 on the theory that the consumer pays the freight.

LOUISIANA

The Railroad Commission of Louisiana has addressed the following communication to the following railroad officials whose roads operate in and out of Alexandria: B. S. Atkinson, general freight agent Louisiana & Arkansas, Texarkana, Ark.; W. F. Braggins, division freight agent Texas & Pacific, New Orleans; Charles S. Fay, general freight agent Southern Pacific; E. C. D. Mahsall, general freight agent Louisiana Railway and Navigation Company, Shreveport; A. T. Stewart, assistant general freight agent St. Louis, Iron Mountain & Southern, St. Louis; Dan Jacobs, general freight agent St. Louis, Watkins & Gulf:

"Information has reached the commission that canceled shipments of high-class freight have been made in carload shipments of low-class freight out of Alexandria, La., such for instance as several barrels of sugar being shipped out in a carload of corn.

"The commission takes this occasion to inform all railroad companies entering Alexandria, La., that such practices are in direct violation of the laws of the State, and should proof be furnished of any violation, the commission will exercise its authority by fining the railroad company guilty of such practice. This letter is sent out for the purpose of having the railroad companies investigate the rumors of such practices by their agents and to guard against them."

The commission has issued an order establishing a mileage rate on uncompressed cotton from points on the Vicksburg, Shreveport and Pacific line.

Thomas J. Freeman, general solicitor of the Texas & Pacific Railway, has written to the Interstate Commerce Commission denying that the company has made any grain elevator allowances within the last three years, with one possible exception, which was submitted to the Commission's judgment.

MINNESOTA

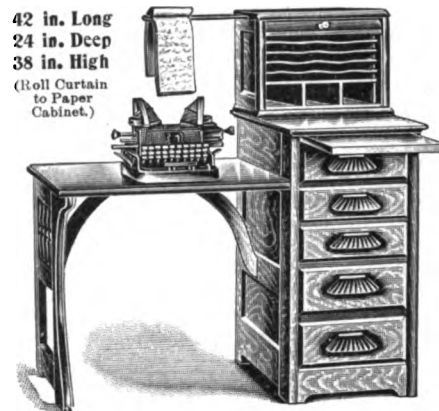
The opinion prevails in some circles that Governor J. A. Johnson is behind the complaints about railroad freight rates in Minnesota. After the Northern Pacific declined to answer one of the questions put to its counsel before the Railroad and Warehouse Commission, the Governor sent a letter to the commission asking it to enforce the 10 per cent. reduction on grain rates maintained by the Northern Pacific. Shortly afterward the roads notified the commission of a 10 per cent. reduction in grain rates. The reductions will apply to all territory more than fifty miles distant from the terminals. It is estimated that the lower rates will mean a saving of more than \$1,000,000 on this year's grain crop.

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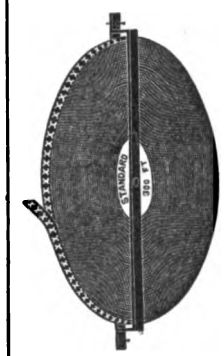
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WRITE FOR CATALOG AND SAMPLES

MISSISSIPPI

The Alabama & Vicksburg road requested the railroad commission for permission to tear up a spur track, about two and one-half miles in length to a stone quarry in Rankin county. The spur was built when the company was furnishing rock for government work in the Mississippi River at Vicksburg, and Superintendent Ford states that it has not been in use for two years.

The Illinois Central has written the commission requesting further information concerning the citation to appear and show cause why the railroad company should be forced to pay a fine for its failure to keep proper order on the special train from Jackson to Canton, June 27. The disorder referred to was caused in two special coaches in the rear of a freight train.

The Louisiana Railroad Commission has written the Mississippi Commission asking for a copy of the State laws and a copy of the court's decision involving railroad questions, with a summary of all pending litigation in which the commission is interested.

MISSOURI

The Missouri State Board of Railway and Warehouse Commissioners concluded its inquiry into freight rates on oil. The evidence submitted was taken under advisement. The board's findings will be made public in a few weeks.

NORTH CAROLINA

The Corporation Commission announced several changes in the classification of freight extensively shipped in North Carolina. The classification of tobacco baskets is changed from third class to Class A, a reduction of about 50 per cent, in the rate. The rate on delivery and freight wagons is changed from one and a half times first class to first class, a reduction of about 50 per cent. A change is also ordered in the classification of mirrors in carload lots, this change being from second to third, a reduction of about 15 per cent.

VIRGINIA

The Corporation Commission has adjourned the freight rate hearing until September 11. Another attempt to get a two cent rate will be made. As will be remembered, the Corporation Commission declared the Churchman bill unconstitutional, stating that it alone had the power to promulgate such a bill and order. Attorney General Anderson, on behalf of the commonwealth, filed with the Supreme Court of Appeals of this State an appeal from the decision of the commission in the passenger rate bill matter. The event, whatever it may be, is looked forward to with much interest.

In the meantime, the commission regards its right to issue the order as a foregone conclusion and will attempt to force the roads to comply with what are essentially the provisions of the Churchman bill. Here is the text of the order:

OFFICES OF THE

STATE CORPORATION COMMISSION:

RICHMOND, Va.,

31st day of July, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and All Persons Interested:

Take notice that the State Corporation Commission will, in the City of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon in accordance with authority conferred

by the constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for the transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, or by a mileage book or otherwise; the commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same will be heard and determined by the commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP,

Chairman;

H. C. STUART,

JOSEPH E. WILLARD,

Commissioners.

WASHINGTON

The Northern Pacific Railway Company has filed with the railroad commission formal objection to the order of the commission relating to joint wheat rates, together with a brief in favor of a modification of the order.

In this brief it is argued that no evidence was introduced at the recent hearing to show that any shipper would be prejudiced by there being no joint rate from or between points on the line of the Northern Pacific Railway Company or from points on the line of the Washington & Columbia River Railway Company, with which it has a traffic agreement, and an established joint rate, to any point on the Northern Pacific.

WISCONSIN

Grain rates for the State of Wisconsin will be reduced practically 1 cent per bushel by an opinion of the railway commission. This is the most important decision that has ever been rendered by the Wisconsin commission.

The order will affect all of the railroads operating in the State of Wisconsin. The matter was started by a complaint made by O. G. Kinney against the Wisconsin Central Railway and later by a complaint of W. L. Houser against the Milwaukee, the Minneapolis & Omaha and the Northwestern roads.

The matter was conducted as an investigation of grain rates between stations in Wisconsin and Milwaukee by the railway commission acting on its own motion. The two complaints involved grain rates from Colfax and Mondovi to Milwaukee only.

THOS. C. MOORE

FREIGHT TRAFFIC MANAGER

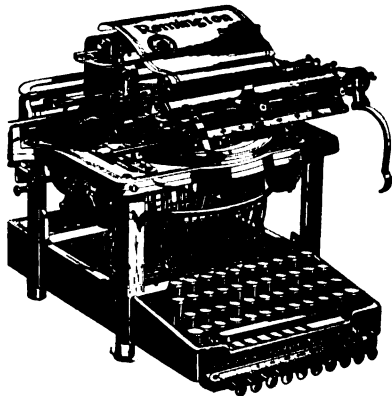
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The commission notified the railroad commission that a complete investigation would be made, on their own initiative, of the whole question and the railroad companies appeared at a formal hearing July 10 and sworn testimony was received at that time of the matter.

The independent investigation of the commission with reference to these grain rates dates almost back to the time of the first organized and elaborate statistical compilation.

The hearings in the matter of passenger rates have contributed much to an exact solution of the question, insofar as this solution depends upon a division of operation expenses between freight and passenger business.

The opinion states that the final adjustment of figures has not yet been made in passenger rates. Subsequent examination may show that this new grain schedule is not correct, but the most advantageous course of procedure in view of the fact that Wisconsin will ship approximately 175,000,000 bushels of grain, and that this is about the time that grain shipments will be made, was to revise the grain rates on the basis of the best available data and leave whatsoever changes seem necessary and just for future consideration.

Following this order is a schedule naming every station in the State of Wisconsin, with a table of the new grain rate between it and Milwaukee.

The commission has issued an order announcing that it has made a considerable reduction in the prevailing rates on the shipment of cheese to Milwaukee. The commission orders a reduction from 15 to 30 per cent. on all cheese shipments. The reduction on full carload lots is much greater than on less than carload lots.

"Held, that the existing concentration system brings advantages to all the parties in interest, but that the concentration rates lack uniformity and system, and that, therefore, a new schedule of concentration rates should be adopted, such a schedule being herein prescribed;

"That the existing rates on cheese from concentration points to Milwaukee are excessive, and should be in accordance with the commodity tariff hereby prescribed;

"That carriers shall hereafter bill lead foil as lead foil and not as tin foil, and charge the rates applicable as lead foil;

"That existing rates on whey butter are excessive and that this product shall be lowered from the second class basis of rates and grouped with third class commodities;

"That all matters connected with this complaint, not otherwise disposed of, relate to interstate commerce and should be brought before the Interstate Commerce Commission."

PERSONAL MENTION

THOMPSON.—J. S. B. Thompson, general agent of the Southern Railway in Atlanta, will spend several months in Europe.

CHAMBERS.—George Chambers has been made general agent of the International Railway Company at Buffalo.

WHARTON.—Richard C. Wharton has been appointed soliciting agent of the Georgia Railroad at Nashville.

SPOULE.—William Sproule, freight traffic manager of the Southern Pacific, will become the traffic manager of the American Smelting Refinery, the Amer-

ican Smelting Securities Company, the Smelters' Steamship Company and other auxiliary corporations on October 1. His salary is said to be \$35,000 a year.

POPE.—Colonel A. Pope has been appointed traffic manager of the Augusta & Florida Railway.

TATE.—R. H. Tate has been appointed division freight agent of the New Orleans & Northeastern, the Vicksburg, Shreveport & Pacific, and the Alabama & Vicksburg, with headquarters at New Orleans.

CURRAN.—D. D. Curran has been made general manager of the New Orleans & Northeastern, the Alabama & Vicksburg, and the Vicksburg, Shreveport & Pacific.

CHALENOR.—L. E. Chalenor has been appointed assistant general freight agent of the Seaboard Air Line at Norfolk.

GLAZE.—T. W. Glaze has been made local freight agent of the Central of Georgia at Atlanta.

MART.—J. Mart has been appointed contracting freight agent of the Southern Pacific at Galveston.

PETTIBONE.—Frank G. Pettibone succeeds Colonel W. E. Nixon as vice president of the Gulf, Colorado & Santa Fé.

STEPHENS.—E. J. Stephens has been appointed car accountant of the Western District of the Southern Railway, with headquarters at Birmingham.

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Wholesale Dry Goods

Demand for American Goods in Foreign Markets

(These reports are collected from a number of sources, all of which are believed to be thoroughly reliable.)

The members of the Lancashire Private Cotton Investigation Commission say that America can, under certain conditions, grow 13,000,000 bales of cotton. They do not appear to believe that there will be any great production of cotton in the British Colonies.

There is a demand for colored papers for house decoration in China. Manufacturers are recommended to send to Shanghai, Hankow and Tientsin detailed catalogues of papers for walls, ceilings, friezes and borders, with samples at least 15 inches square.

Brazil is inviting American interests to invest in her railroad companies. Naturally with such an investment would come the purchase of supplies from the United States.

Texas oil has been used satisfactorily in sprinkling the macadam roadways in the vicinity of Liverpool. The surface having the cleanest and whitest appearance was that coated with creosote oil mixed with rosin, while that covered with creosote oil mixed with tallow had the least odor. The dust clouds which are raised by motor cars have become a source of medical and commercial alarm in England and it is believed that the use of oil will be of great value in keeping the highways in sanitary condition.

Consul P. Lieber, writing from Düsseldorf, tells of the carelessness of some Americans who ship goods to Germany, as follows:

"Carelessness in packing goods for export and unreasonable delays in transit are causing a great many complaints among the consignees in Europe and are detrimental to the development of our export trade. For example, a case of whisky came with a breakage of 17 per cent., owing to the fact that the bottles were too close to the sides of the box and not protected by a layer of straw or other material. Two steel ranges bought from a factory at Lorain, Ohio, and shipped from there in September, 1905, did not reach Düsseldorf until the last week in May, and were received in a shameful condition and fully one-third of the castings used in the construction of the ranges were broken and had to be replaced by a local foundry at great expense. The ranges were not fastened and bolted down as

they should have been; they were simply left loose inside of the box and the handling at the various depots and piers even if it had been most careful could not help but to injure the ranges in a manner that had they been shipped to a merchant they would have been refused by the consignee and left at shippers' hands. If we expect to enlarge our export trade this item of packing and quick transportation is of the utmost importance and will be worthy of careful consideration on the part of our shippers."

A demand for electric car brakes of all standard kinds has developed in Great Britain. Accidents from cars getting beyond the control of motormen have aroused the authorities, who are now insisting upon better and more effective brakes.

It is believed that slot machines can be introduced in Greece to advantage. The Greeks do not chew gum, but they are, for example, inordinately fond of perfume.

American seeds can be sold in Madeira. The heavy rains and unusual cold weather destroyed certain crops there and threatened others. Seeds of a dryer climate have never failed of good results in Madeira.

The value of matches imported into India through the port of Calcutta during 1905-6 was \$567,298, an increase over last year of 20.8 per cent. Of this, Belgium furnished mostly Swedish matches, in value \$208,076; Sweden, direct, \$33,335; Japan and Straits Settlements, \$166,665, and Germany, \$83,335. No American-made matches were received. This suggests an opportunity for American manufacturers of matches. It should be borne in mind that matches intended for the Indian market should be made especially for a damp, humid climate. The safety or parlor match is most in favor, because best suited to the needs of natives as well as of Europeans.

The quantity of barbed wire imported from the United States to Brazil is increasing, and if the present high duty is removed, which seems probable, the possibilities of this trade will be very large.

Food products, wearing apparel, etc., can be sold in Honduras by United States merchants to excellent advantage. Honduras has almost no factories and buys her manufactured supplies abroad.

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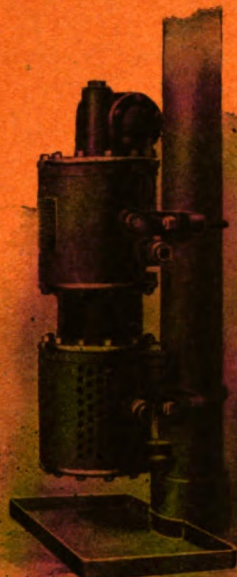


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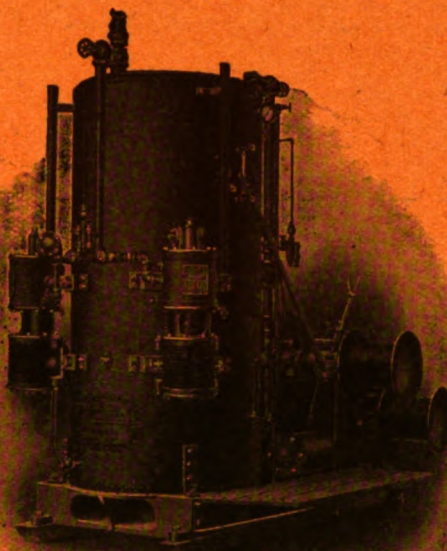
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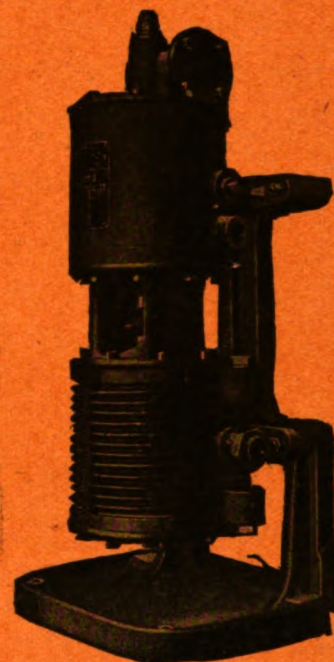
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Los Angeles, 527 South Main St.
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The Order Bill of Lading as a Basis of Credit

BY JAMES W. SALE

President of the Farmers' and Traders' Bank of Markle, Ind.

[An address delivered before the Bankers' Association of Illinois, at Springfield, September 26, 1906.]

DURING the past two years so much has been spoken and published with reference to the legal status of the usual order bill of lading that I shall not attempt a technical discussion of the demerits of that document, but simply refer to its well established disabilities as they affect my subject, review some of the work that has been done, and suggest what should be done to make them more stable in the performance of their legitimate functions as representatives of value.

Is the Order B/L Safe?

Is the order bill of lading as now in common use a reliable basis of credit, a safe collateral? Is it a proper subject of pledge? A number of large banks who formerly handled them in considerable quantities as collaterals, either when attached to drafts or covered by collateral notes, are now refusing to accept them at all, and the number is growing. One of the largest banks in an important shipping center in a Southern State will not now allow a draft to go through its hands with a bill of lading attached to it, even for collection purposes, while banks at destination, who have been accustomed to make advances to consignees on bills of lading pending arrival of goods, are now refusing to do so. There must be some good reason for such action on the part of our financial institutions. The volume of business annually transacted through these circulating mediums has been estimated at more than \$3,000,000,000, and it is evident that a sudden withdrawal of these credits would paralyze industries and obstruct the channels of internal commerce to an extent that would produce a panic. Although the volume of money has been largely augmented in the past few years, the growth of our commerce has outstripped it. Commerce has likewise expanded more rapidly than have the railroad systems, in spite of their heroic efforts to afford transportation facilities adequate to distribute the products of the farm and factory. This condition has congested traffic to such an extent, and has caused such delays, that transportation is slower than formerly, and our commodities are in

the hands of the carriers longer. As an indication of the rapid growth of our internal commerce, the following statistics from the Department of Commerce and Labor will be of interest. The total in 1880 was approximately nine billions; in 1890, fourteen billions; in 1900, twenty billions, and in 1905, twenty-four billions. The tons of freight carried in 1890 was 363,541,617; in 1900, 957,863,605; in 1904 (the latest date available), 1,089,226,440. With these conditions, an increase in tonnage and value much greater than the increase in money, it is not strange that shippers and manufacturers, both small and large, who formerly had ample capital, found it necessary to use bills of lading as mediums of credit. Likewise the tendency of the banker, for obvious reasons, during the past twenty years has been to the use of collateral securities rather than personal indorsements. It is inevitable under these conditions that the use of the railroad receipt for property, a representative of value, protected in its ownership by assignment, should rapidly become popular, and its use grow into such proportions as to make it indispensable in the distribution of the products of the country. Bankers have looked upon them as such stable securities that they have been taken readily in all sections without close scrutiny or question. Until within the past five years losses seemed to be rare and inconsequential, but the experience since 1900 has been different. Reports of large and frequent losses must be noted. Court rulings on various State laws have been published, in some cases promulgating doctrines particularly prejudicial to the banker. Investigation and discussion were started, and the situation became critical with an attempt on the part of the carriers in Official Classification territory to adopt a bill of lading non-negotiable in form, and which by its conditions relieved them of common law liability.

Non-Negotiable in Character

As a result of the decision of the courts and the action of the carriers, the bill of lading as collateral is now looked upon with suspicion, and by many bankers

discredited to a large extent. This brings us to the question, Is the order bill of lading a proper basis for credit? I answer the question by enumerating, without argument, two well established objections that are urged against it:

1. Their non-negotiable character. We must bear in mind that these documents, as defined by various State courts and by the United States Supreme Court, are quasi-negotiable only. While the order bill of lading is a miniment of title and one is apt to consider it representative of money, it is essentially different from notes or bills of exchange, which are clothed with full power of negotiability. It has a twofold function. It not only represents title to the property covered by it, and hence value to its owner, but it is as well a receipt from the carrier and a contract to deliver the property it represents to some distant point. The bill of exchange has a definite or fixed value in money known or ascertainable. The bill of lading represents property and this may have a fluctuating value, or its value may be affected by its location, accidents or delay in its transportation. The order bill of lading also usually represents property which is the subject of a contract between buyer and seller. Under common law a contract is not so assignable as to permit an assignee, even though he be a bona fide owner, to enforce the contract in his own name. It also differs from the negotiable instrument in that an innocent purchaser may be estopped from collection by a plea of fraud on the part of the payor. While many courts have extended the law of negotiable paper to bills of lading, and particularly under statutes made for the purpose, many others have, by judicial interpretation, narrowed the application of the law. If the holder of the bill of lading has been permitted to sue on it, he has frequently been substituted in the contract between the buyer and seller of the goods. A number of States have endeavored by statute to overcome this defect, but the State laws lack uniformity and are replete with qualifying clauses which render them practically valueless. To be valuable as collateral, then, the order bill of lading must have at least those elements of negotiability which shall cut off prior equities. This can only be given by the enactment of law.

Handled Carelessly

2. The careless manner in which the carriers and their agents handle order bills of lading makes them unsafe as credits. Numerous and heavy losses have been experienced by banks, owing to failure of the carrier at destination to require the surrender of the original bill of lading upon the delivery of the goods in accordance with an agreement to that effect. Suppose the bill of lading has been pledged by the consignor or consignee as security; after the consignee obtains possession of the property, he may default, leave his note unpaid or possibly fail to pay consignor's draft. In such cases courts have held that the property, having been delivered to the proper consignee, the carrier could

not be bound to the pledgee for the value of the property represented by the bill of lading. So also valuable bills of lading representing in a single document hundreds or thousands of dollars are carelessly drawn by the initial carrier's agent, often written with a common lead pencil, signed with a rubber stamp, and frequently altered by changing of date, description of contents, car number or weight. The rule of the common law is that any alteration of a bill of lading voids the instrument and prevents its enforcement even according to its original tenor. Again, there is at present no established particular printed form of order bill furnished by railroads. It is only different from the ordinary "straight" bill by having the words "order of" written before the name of the consignor or owner named in the bill. It therefore becomes an easy matter to convert a simple receipt or straight bill of lading to an order bill for the purpose of using it as collateral, when it is absolutely worthless as against the named consignee. Order bills should be printed on substantial paper and be of a distinctive and special form, with the words "order of" plainly and prominently printed in the body of the document. Again, courts have held that a duly accredited agent of the carrier may issue a fraudulent bill, may receipt for goods before actual delivery or over-receipt for weight or quantity, and that in such case the carrier is not liable for the act of its agent. But perhaps the most dangerous doctrine that has been established by legal decisions is the one which holds the pledgee responsible for the fulfilment of the contract, or the quality and quantity of the goods represented by the instrument. These decisions have been given publicity through the press, and it is unnecessary to recite them here, but the banker assumes a degree of responsibility entirely inadequate to his compensation when, by discounting a draft with a bill of lading attached, he assumes the contract not only of his customer, but possibly guarantees a fraudulent bill of lading issued by the carrier's agent.

Under these conditions, hastily enumerated, it is plain that the use of bills of lading as credits in their present form and as governed by varying State laws is unwise and fraught with danger. What is to be done? Shall we as bankers decline to accept these important instruments of title as collateral? I do not believe we can do so without seriously crippling the commerce of the country, neither do I believe we have the right to do so, occupying as we do the position of purveyors of finance, the medium through which all of the great movements of commerce must circulate. A sudden withdrawal of these credits would paralyze the business of the country and produce permanent and widespread distress to all classes of business interests.

Order Bills a Necessity

In my judgment the use of this class of securities, and the comparatively safe method the order bill of lading furnishes for the transfer and distribution of our products from buyer to seller, is but in its infancy.

As the commerce of our country grows, and the "cash in hand" idea more and more obtains in the handling of our commodities, the use of the order bill of lading will become indispensable. We cannot abolish it if we would, neither do I believe, after mature deliberation, we would if we could. The farmer, shipper, manufacturer and exporter are important factors, which neither the banker nor the railroads dare ignore. The experience of the past few days in New York, when call money went to 25 per cent. owing to a stringency caused by heavy withdrawals of currency to the West for the movement of the bountiful crops, is a warning that the currency system of the United States is not sufficiently elastic to easily care for the tremendous requirements at certain seasons of the year, and as bankers we dare not by drastic action destroy a system that has grown to such gigantic proportions, and is so closely interwoven with the transportation and financing of our interstate commerce, when to destroy it would threaten our whole financial system. What, then, can be done to establish the order bill of lading as a firm, substantial basis of credit? In the opinion of those who have carefully studied the subject nothing will suffice but Federal legislation, clothing the bill of lading with definite authority of law, giving it at least limited negotiable powers, preserving to the bona fide purchaser or holder his equities in the instrument, and requiring the carrier to recognize its valuable properties as a collateral, and safeguard its issue and surrender, to the extent that it may not easily be forged or altered. The great bulk of order bills of lading are issued for interstate commerce, and issued by carriers whose lines extend beyond State boundaries. It therefore follows that State laws, even if uniform (which could hardly be possible), would not be effectual. It is obvious that we must either have an act of Congress which shall reasonably protect the shipper and his assigns or an amicable agreement must be reached with the railroads which will be just to all interests. There seems at this time to be no hope for a settlement of the trouble by the latter plan. In April, 1904, the carriers in Official Classification territory by concerted action attempted to adopt a new form known as the "uniform bill of lading," which expressly stated that it was non-negotiable, and released the railroads from their common law liability, unless the shipper elected to pay freight at an advance of 20 per cent. above usual rates, to insure the safe carriage of his property to destination. So much objection was raised to the form by shippers that the adoption was postponed until October 1, and later until January, 1905. In December, 1904, an organization known as the American Shippers' Association, with headquarters in Chicago, appeared before the Interstate Commerce Commission in a complaint against the proposed action by the carriers. The railroads were represented at the hearing, and finally agreed to suspend the operation of the new form, and, acting under the direction of the Commission, agreed to meet a committee from the American Shippers' As-

sociation and endeavor to prepare a form that would be acceptable to shippers. That joint committee has had several meetings, but thus far has failed to agree.

"Not Negotiable"

In the meantime, notwithstanding their promise to the Commission, the Official Classification committee published and put in effect July 1 last "Official Classification No. 28," incorporating therein the form objected to by the committee, providing that the words "not negotiable" shall be printed on the face of each blank (which is, however, subject to erasure from order bills of lading *only upon request* of the shipper), and retaining the conditions releasing the carrier from liability in almost every conceivable case. At the head of every page in the book are these words: "Property shipped not subject to uniform bill of lading conditions will be charged 20 per cent. higher than as herein provided"; and at the head of every classification column appear these words: "Subject to uniform bill of lading conditions." In addition to this, nearly all the forms now in use in the territory mentioned read as follows: "Received subject to the classification in effect on the date of the receipt by the carrier of the property described in this original bill of lading," etc. Every pound of freight now moving in Official Classification territory is subject to Official Classification No. 28. This action is, to say the least, an evasion of the agreement with the Interstate Commerce Commission, and it is evident that the railroads do not expect to reach an amicable agreement in the joint committee. Mr. George H. Hull, Jr., a New York lawyer and an authority on economic questions, in a recent communication to the *New York Journal of Commerce*, says that "no amount of co-operation between bankers and railroads can solve the bill of lading question between bankers and railroads, hence it behooves the railroads as well as the bankers to promote and expedite legislation." His argument is that the operation of present laws is prejudicial to the railroads in some States, and that before they can meet the demands of the banker they must have legislation that will protect them in the proper performance of the duties to be assumed in receipting for property in a manner that will meet the necessities of the shipper and banker. His argument is so convincing that I quote his exact words. In part he says: "Under present conditions financial interests are reluctant to advance money on drafts secured by railroad bills of lading, because the railroad does not issue a bill of lading which gives clear title to the goods. The railroad, on the other hand, is not in a position to create a bill of lading carrying such a title, since the laws of certain States provide that a common carrier, a mortgagee or a bona fide purchaser for value can be deprived of the possession of goods by any one holding a prior lien upon such goods. Under these conditions the mere fact of possession does not constitute an unquestionable title to any goods, hence the holder thereof, without tracing the history

of each lot of goods, can never know at what moment they may be confiscated; and thus neither the railroad nor the banker can properly perform the services required of them without incurring this unreasonable risk so long as they operate within the States where these absurd laws are in force."

The Bankers' Bill

At the last meeting of the American Bankers' Association, a special committee of five members was appointed to confer with the joint committee of carriers and shippers of the bankers' committee. Lewis E. Pierson, president of the New York National Exchange bank, was selected as chairman. This committee immediately asked permission to participate in the proceedings of the joint commission, but were denied admission. A little later they decided (what I have tried to show) that the only course that is open for relief is through national law, and since that time they have faithfully labored to that end. Through Hon. Charles E. Townsend they introduced a bill in the House of Representatives embodying the following features:

1. The issuance of order bills in which the words "order of" shall be printed.
2. To provide for full negotiability.
3. To prevent any alteration from inforcement of the bill according to its original tenor.
4. To relieve banks handling such documents from assuming any responsibility for quantity or quality of goods.
5. To keep valid a bill until its actual surrender and cancellation by the carrier.
6. To hold carriers responsible for the acts of their agents in issuing bills of lading.

After a hearing before the House Committee on Interstate and Foreign Commerce in March, the committee deemed it wise to make some changes in deference to objection by members of the House Committee to some of its features on constitutional grounds, and an amended bill was substituted, which it was believed would furnish the needed relief and at the same time overcome the objections raised. Later the Hepburn rate bill came up for passage with a clause pertaining to bills of lading, somewhat complicating the situation, and at the request of Mr. Pierson's committee further action by the House Committee on the bankers' bill was indefinitely postponed. The bankers' committee, however, is still actively at work and will be prepared to push the battle vigorously at the opening of Congress.

The Carmack Amendment

Through what is known as the Carmack amendment to the Hepburn rate bill (now a law and in force), the carrier is required to issue a receipt or bill of lading to the shipper if it receive property for transportation from a point in one State to another. The initial

carrier is held liable to the lawful holder of the bill of lading for any loss, damage or injury to such property which may occur on its own lines or those of the connecting carrier. It stipulates that no contract, rule or regulation shall exempt the carrier from the liability thereby imposed. This law, if it be found constitutional, will secure for the shipper a legal right to a bill of lading, and will no doubt force the carrier to assume common law liability when the bill of lading is issued under a proper form. The question has already been raised as to whether railroads will be required, under the new law, to receipt for property *to be transported* from one State to another, or whether they shall be permitted to receipt, as is the common practice now, for property "*consigned and destined*," "which said company agrees to carry to its usual place of delivery at said destination if on its own road, otherwise to deliver to another carrier on the route to said destination." If the Federal courts rule that the initial carrier is not required by the provisions of the law to receipt for property "*to be transported*" to destination by its own or connecting lines, then certainly the effect of the law will be nullified. But, regardless of this, the Carmack amendment gives to the bill of lading no value as a negotiable document, nor does it close the door to fraudulent issue and use of the instrument—two points of vital interest to shipper and banker alike.

Thus far the bankers' committee has held aloof from alliance with other interests, but the interests of the banker and the shipper are so nearly identical that it seems they should unite their forces and co-operate for Federal legislation that will be fair and just to the banker, manufacturer and shipper without imposing undue burdens upon the carrier. To this end—and I am suggesting only—it would seem wise that the Illinois Bankers' Association at this meeting provide a committee with full power to act in conjunction with the American Bankers' Association for the promotion of Federal legislation, and that the co-operation of shippers' and manufacturers' associations within the State be invited to join their influence with yours for the speedy enactment of remedial legislation, that shall be a protection to the honest shipper, the banker, the carrier and the receiver. It is eminently proper that each of the parties should know their rights, duties and liabilities and that they should be defined by law. Until that time we shall be under the necessity of making advances largely on the personal credit of the party seeking the advance. To continue under present conditions means the loss of large amounts of money; to discontinue making advances will tie up the wheels of progress and industrial activity.

The FREIGHT CLAIM INDEX AND RECORD, by W. R. Campbell, published by the FREIGHT PUBLISHING COMPANY, No. 116 Nassau Street, New York, will be found indispensable to every shipper after it is once placed in use. Price \$5.

Missouri Initial Carriers' Liability Act

BY DAVID E. JONES

THERE is no portion of the Rate Law of 1906 which is more important than the so-called Carmack amendment, by which it is proposed to make the initial carrier liable for loss and damage to property, whether the loss occurs upon the line of the initial road or on the lines of connecting carriers. Several States have statutes similar in their purport to the Carmack amendment. The one which approaches nearest in its wording is that of Missouri. This law provides not only the form of bills of lading to be used on shipments between points in the State, but also for shipments originating in Missouri and destined to other States.

The Missouri Law

The provision reads:

SECTION 5222. LIABILITIES OF COMMON CARRIERS.—Whenever any property is received by a common carrier to be transferred from one place to another, within or without this State, and when a railroad or other transportation company issues receipts or bills of lading in this State, the common carrier, railroad or transportation company issuing such bill of lading shall be liable for any loss, damage or injury to such property, caused by its negligence or the negligence of any other common carrier, railroad or transportation company to which such property may be delivered, or over whose line such property may pass; and the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover in a proper action, the amount of any loss, damage or injury it may be required to pay to the owner of such property, from the common carrier, railroad or transportation company through whose negligence the loss, damage or injury may be sustained. (R. S. 1889, Section 944.) Chapter 87, R. S. Missouri, 1899.

Construction of the Statute

One of the earliest cases which construed this statute originated in a shipment of cattle by McCann & Smizer, dealers in live stock. The shipment originated at Stoutsville, Mo., on the lines of the M., K. & T. Ry., which was then in the hands of receivers. The shipment consisted of six carloads of cattle, and the customary live stock bill of lading was delivered to the shippers.

The contract set out that the railroad was to transport the live stock from Stoutsville station to Chicago, Ill., station, consigned to Brown Bros. & Smith, at 17½ cents per 100 pounds; that by reason of this reduced rate the shippers agreed to various conditions. The conditions pertaining to the initial carrier were as follows: The railroad was released from liability of a common carrier and assumed only the liability of forwarder or private carrier for hire. The carrier was released from all liability on account of delay in shipping the stock after it had been delivered to the

agent, or delay in delivering after it had been tendered by the agent; that the shippers assumed the risk of injury to the stock which might be occasioned by delay in the transportation caused by any mob, strike, threatened or actual violence, failure of machinery or cars, injury to track or yards, storms, floods, escape or robbery of stock, overloading cars, fright or crowding of animals, and from any other cause except the negligence of the carrier, which is to be proved by the shippers. It was further stipulated that in case the live stock was to be "transported over the road or roads of any other company, the said party of the first part (the railroad) shall be released from liability of every kind after said stock shall have left its road, * * *" and that the originating carrier "shall not be held or deemed liable for anything beyond the line of the M., K. & T. Railway, excepting to protect the through rate of freight named herein."

At the time of the execution of the bill of lading the usual contract with respect to transportation of caretakers was made; they expressly agreed "that during the time we are in charge of said live stock and while we are on our return passage, we shall be deemed the employes of said receivers of the M., K. & T. Ry.," and the caretakers released the railway from liability.

The shipment was transported over the lines of the initial carrier to Hannibal, Mo., where it was turned over to the Wabash, destined to Chicago. When near Chicago, by reason of the negligence of the employes of the Wabash Railway, delay was occasioned in the transportation of the cattle by which damage resulted to the shippers. Upon suit being brought and appealed to the Supreme Court of Missouri, it was determined that the shippers were entitled to recover.

Decision of the Supreme Court

The case was appealed to the Supreme Court of the United States, and it was alleged by the carrier (1) that the Missouri statute was in conflict with the Constitution of the United States because it regulated commerce between States; (2) that the statute, as interpreted by the Supreme Court of Missouri, operated to deprive the carrier of the power of making a through shipment in interstate commerce over connecting lines without becoming liable for the negligence of the connecting carriers; (3) that the M., K. & T. Railway could not do an interstate business except by becoming responsible for the articles carried throughout the entire route, and that such action was a burden upon interstate commerce; (4) that the operation of the statute would be such as to discourage the through transportation of merchandise and have a direct and inevitable

tendency to defeat Section 6 of the Act to Regulate Commerce, as well also as Section 7 of the same act.

The Supreme Court decided the case in May, 1899, and, in an opinion by Mr. Justice White (Mr. Justice Harlan dissenting) said:

"The contention advanced in these several propositions is, however, without foundation, from the fact that it proceeds upon an erroneous assumption of purport of the Missouri statute in question, since the Supreme Court of Missouri, in applying that statute in the case before us, has, in the most positive terms, declared that it was not intended to and did not prevent a carrier engaged in interstate commerce traffic limiting his liability to his own line, and that, far from doing this, the statute left the carrier the amplest power to make such limitation in receiving goods for interstate carriage and in issuing a through bill of lading therefor. In commenting on the statute the (Missouri) court said:

"The provision of the statute is that wherever any property is received by a common carrier to be transferred from one place to another." This language does not restrict, but rather recognizes, the right of the carrier to limit its contract of carriage to the end of its own route, and there deliver the property to the connecting carrier.

"There can be no doubt, then, that under the statute, as well as under the English law, the carrier can, by contract, limit his duty and obligation to carriage over his own route."

"Again, in summing up its conclusions, the court said:

"We are unable to see, as contended by defendant, that the construction we give this statute makes it repugnant to the provisions of the Constitution of the United States, which gives to Congress alone the power to regulate commerce among the States.

"The act in no way operates as a regulation of trade and business among the States. No burden or restriction on transportation is imposed. Carriers are left free to make their own contracts in regard to compensation for their services for transportation between the States, subject to congressional regulations."

"The reasoning now relied on, then, is, that although the Supreme Court of the State of Missouri has interpreted the statute of that State as not depriving a carrier of power, on receiving an interstate shipment, to limit its liability to its own line, this court should disregard the interpretation given to the State statute by the court of last resort of the State, and hold that the statute means the very contrary of its import, as declared by the Supreme Court of the State, and upon such construction decide that the State law is repugnant to the Constitution of the United States. But the elementary rule is that this court accepts the interpretation of the statute of a State affixed to it by the court of last resort thereof.

"It is urged, however, that, even although it must be conceded that the Supreme Court of Missouri has interpreted the statute in question, in an abstract sense, as not depriving a railroad company of the power to limit its liability to its own line when receiving goods for interstate shipment, the court has nevertheless given the statute practical enforcement, as if it meant exactly the contrary of the interpretation affixed to it. In other words, the proposition is, although the Supreme Court of Missouri has declared that the statute did not deprive a carrier of its right to limit its liability to its own line, yet it has, as a necessary consequence of its application of the statute to the bill of

lading in controversy in this cause, given to the statute the very meaning which it expressly declared it had not. An examination, however, of the opinion of the Supreme Court of Missouri demonstrates that it is not justly susceptible of the construction thus placed upon it. Analyzing the opinion of the court, it results that the court decided that, while the statute left a railway company ample power to restrict its liability by contract, both as to carriage and as to liability for negligence, to its own line, the purpose embodied in the statute was to regulate the form in which the contract should be expressed, so as to require the carrier to embody the limitation directly and in unambiguous terms in the portion of the agreement reciting the contract to transport, and not to import or imply such limitation by way of exception or statements of conditions and qualifications, requiring on the part of the shipper a critical comparison of clauses of the contract, in order to reach a proper understanding of its meaning. That is to say, that the restraint imposed by the statute was not a curtailment of the power to limit liability to the line of the carrier accepting the freight, but a regulation of the form in which the contract having that object in view should be drawn."

A Way to Exemption Shown

The court indicated how the carrier could have exempted itself from the operation of this statute:

"If the bill of lading," said the court, "in the case before us did not contain a positive statement of an obligation by the receiving carrier to transport from the point of shipment to the ultimate destination of the cattle, of course it would not come under the control of the statute. But as, on the contrary, the contract contains an expression of such obligation, limited by reference solely to subsequent conditions inserted in the bill of lading, it is plainly brought within the import of the statute as interpreted by the Missouri court. It would have been within the power of the receivers of the Missouri, Kansas & Texas Railway to have stipulated that the goods were received, to be transported by them from Stoutsville to the termination of the line of railway operated by the receivers and there to be delivered to a connecting carrier, who was to complete the transportation. If this had been done, the bill of lading would have had the plain import which the statute requires; nothing would have been left for construction, and the contract would have conveyed its obvious significance to the shipper who accepted it from the carrier. Because, instead of doing this, the carrier chose, in the body of the bill of lading, to stipulate that they were 'to transport for the second party the live stock described below, and the parties in charge thereof, as hereinafter provided, namely: Six cars said to contain ninety-five head of cattle, m. or l. o. r. from Stoutsville station, Miss., to Chicago, Ill., station, consigned to Brown Brothers & Smith, care Union Stock Yards at Chicago, Ill., at the through rate of 17½ cents per hundred pounds, from Stoutsville, Miss., to Chicago, Ill.,' thus carrying out the limitation with respect to carriage, if any, by reference to subsequent conditions, it cannot be reasonably complained that the contract is governed by the statute. The ancillary agreement which was indorsed on the bill of lading, it is to be noted, adds cogency to this view, since it declares that during the whole length of the transit the parties who were to be in charge of the cattle should be deemed employes of the receivers of the Missouri, Kansas & Texas Railway, the initial carrier, and that they should have no right to recover in the event of an in-

jury or damage sustained, for which the receivers would not be liable to their regular employees."

Initial Carriers Not Liable

It clearly appears that the present bill of lading in use on most of the railways of the United States does not fall within the import of the Carmack amendment. If, as was resolved in the affirmative by the Supreme Court, the bill of lading in the McCann case did fall within the provisions of the statute, it is quite clear that initial carriers cannot now be held liable for loss and damage occurring upon the connecting line where they have specifically provided against the assumption of that liability. The court referred to a Virginia statute somewhat similar, and concluded its opinion in the McCann case as follows:

"To assert that because there is a liability arising from the application of the statute to the bill of lading which would not result from the bill of lading itself, therefore the statute must necessarily have been held

to impose on the carrier a liability for an interstate shipment beyond its own line, is without merit. True, if there had been no statute regulating the form of the bill of lading, and we were called upon to construe the instrument, we might consider that the limitations referred to in the contract restricted the liability of the carrier to his own line. This result, however, is rendered impossible in view of the statute, not because from its provisions a liability is imposed, but because of the failure of the contract to conform to the requisites of the statute. Such was the exact condition in the Patterson case (169 U. S. 311), for it cannot be doubted that, if in that case there had been no statute requiring the signature of the shipper to a contract limiting liability, a contract not signed by the shipper, containing an exemption, would have been efficacious. But, as the statute required the signature, the contract, unsigned by the shipper, was ineffective to relieve the carrier from a liability stipulated against, it is true, but which was inoperative because not expressed in legal form. Such is, in substance, the situation here presented."

English and Canadian Bills of Lading

Freight prints on following pages facsimiles of the forms used by the South Eastern & Chatham Railway and the Canadian Pacific Railway.

IN considering what should be the conditions of the bill of lading in this country it certainly is not uninteresting and may perhaps be instructive to consider the form and conditions of this document in England and Canada. Through the courtesy of L. E. K. Thomas, Parcels Manager, South Eastern and Chatham Railway, we are enabled to reproduce in this issue the bills of lading, or "Consignment Notes," which are in use on that road. English consignment notes are not uniform for all carriers, but are very similar. We also reproduce the bill of lading of the Canadian Pacific Railway Company.

The forms of bills of lading used by the South Eastern and Chatham Railway are three in number, and are used for the purposes as stated by the parcels managers of that railway in a communication received from him.

Consignment Notes

1. "The form of consignment note used for packages intended for shipment abroad, which answers the purpose of a bill of lading, and contains the various conditions under which such consignments are accepted and conveyed by the Managing Committee." This corresponds to the American land and water through bill of lading, the conditions being applicable to the traffic thus carried.

2. "A consignment note for articles to be despatched by passenger train conveyed at specifically low rates; no consignment note being required for articles conveyed by passenger train at ordinary parcels rates which are usually confined to packages weighing not more than 2 cwt." This consignment note is reproduced in this issue of FREIGHT.

3. "A consignment note for articles by goods train or slow service, the conditions under which such goods are received being printed at the back." This form of consignment note used by the South Eastern & Chatham Railway is reproduced in this issue of FREIGHT.

English Bill Has Stood the Test

Concerning the English bill, it should be remembered that each of the conditions have stood the test of the Railway Commission and have severally been determined to be reasonable and just. Of the considerable number, all are plain enough to the lay reader except possibly the first one. It reads: "The company will not be liable for loss of or injury done to any goods, matters or things described in the Carriers' Act, 1830, unless the particular articles and the value thereof be declared, and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred." The Carriers' Act (1 Will. IV. cap. 68, 23d July, 1830) provides that mail contractors, coach proprietors and carriers are not to be liable for the loss of certain goods above the value of ten pounds sterling unless they be delivered as such and an increased charge paid for their carriage. The carrier must give notice of such increased rates and give receipts acknowledging the kind and value of the goods. The first section of the act, after reciting the customary "Whereas" of all English laws, reads: "Be it therefore enacted . . . that from and after the passage of this act no mail contractor, stage coach proprietor, or other common carrier by land for hire shall be liable for the loss of or injury to any article or articles or property of the descriptions fol-

lowing: (that is to say) gold or silver coin of this realm or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewelry, watches, clocks or timepieces of any description, trinkets, bills, notes of the governor and company of the banks of England, Scotland and Ireland, respectively, or of any other bank in Great Britain or Ireland, orders, notes, or securities for the payment of money, English or foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought or not wrought up with other materials, furs, or lace, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger in any mail or stage coach or other public conveyance, when the value of such article or articles or property contained in such parcel or package shall exceed the sum of ten pounds unless at the time of the delivery thereof at the office, warehouse, or receiving house of such mail contractor, stage coach proprietor, or other common carrier, or to his, her or their bookkeeper, coachman, or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package."

Canadian Bills of Lading

The bills of lading used by the various Canadian roads are not uniform, the conditions varying materially. The Canadian Railway Commission is authorized under subsection 2 of section 275 to determine the extent to which the liability of the carrier may be limited, restricted or impaired; it is also authorized to prescribe the terms and conditions under which any traffic may be carried by the company. A reading of the conditions of the Canadian bill leads to the conclusion that it is a much greater hardship on the owner of the property transported than the conditions imposed by the bills in use in this country or in England.

The Canadian law provides: "No contract, condition, bylaw, regulation, declaration, or notice made or given by the company, impairing, restricting or limiting its liability in respect of the carriage of any traffic, shall relieve the company from such liability, except as hereinafter provided, unless such class of contract, condition, bylaw, regulation, declaration or notice shall have been first authorized or approved by order or regulation of the board" (of railway commissioners).

Under the authority of the Board, it shortly after it was organized called upon the several Canadian carriers to file their contracts for carriage, including bills of lading, release forms, etc. As it appeared, not

only from the varying forms in use, but also from the large amount of work to be done to determine just to what extent, if at all, the carriers ought to be permitted to limit their liability, the forms then in use were temporarily approved and permitted to be in force until full opportunity could be had for the determination of the important questions involved. For various reasons the work has not been taken up by the Commission, so that by virtue of the temporary order the forms and conditions are still in use.

Order of the Commission

The temporary order of the Commission was issued October 19, 1904. It read:

"In the matter of the application of the Grand Trunk Railway Company, the Canadian Pacific Railway Company, the Canadian Northern Railway Company and the Pere Marquette Railroad Company, for approval by the Board of Railway Commissioners of their forms of bills of lading and other traffic forms, in compliance with section 275, subsections 1 and 2 of the Railway Act.

"The above named companies are the only railway companies in Canada which have, up to the present moment, complied with the requirements of section 275; and in respect of these so far received it may be remarked that there is much diversity in the forms of the several railways. The whole subject is of very great importance, and will require that much circumspection should be exercised in examining into the contracts and forms which the Board hereafter has to approve; and also into the question of limitation of liability on the part of carriers.

"In view of these facts, and that the railways generally have not submitted their forms for approval, the Board does not deem it advisable to make any final or definite order upon the subject at present, but is of the opinion that an interim order might properly be made, permitting such railways as have made application therefor to continue the use of their present forms until the Board shall otherwise prescribe and order.

"It is therefore ordered that the above mentioned applicants do severally have power to use the forms submitted, and they are hereby legally authorized so to do until this Board shall hereafter otherwise order and determine.

"And the Board further requires that a select committee be formed of the legal and traffic officials of the several railway companies named, and others who may hereafter submit their applications to meet the Board at Ottawa, on a date to be hereafter announced, the discussion of the said forms and contracts, both freight and passenger, at a session of the Board to be called for such purpose."

The FREIGHT CLAIM INDEX AND RECORD, by W. R. Campbell, published by the FREIGHT PUBLISHING COMPANY, No. 116 Nassau Street, New York, will be found indispensable to every shipper after it is once placed in use. Price \$5.

(Obverse Side.)

N.B.—Perishable Consignments should be at the Station 30 minutes before departure of Train, fully addressed. A Consignment Note with full particulars must be handed in for all Perishable Traffic.

GENERAL CONDITIONS.

(Reverse Side.)

- 1.—The Managing Committee will not be liable for loss of or injury done to any merchandise, matters or things described in the *General Act, 1830*, unless the particular articles and the value thereof be declared, and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred.
- 2.—In respect of any animals, luggage, or merchandise booked through by them or their Agents for conveyance, partly by railway and partly by sea, or partly by canal and partly by sea, the Managing Committee shall be exempted from liability for any loss, damage, or delay which may arise during the carriage of any such animals, luggage, or merchandise by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, in the same manner as if the Managing Committee had signed and delivered to the Consignor a bill of lading containing such condition.
- 3.—No claim in respect of merchandise, for loss or damage during transit, for which the Managing Committee may be liable, will be allowed unless the same be made in writing within three days after delivery of the merchandise in respect of which the claim is made, such delivery to be considered complete at the termination of the transit as specified in the next condition.
- 4.—The transit shall in no case extend beyond (a) the time when merchandise carted by the Managing Committee is unloaded or tendered at the address to which it is consigned; or (b) the expiration of 24 hours after notice of arrival of the merchandise posted by the Managing Committee, is due for delivery to the Consignee in the ordinary course of post, or notice of arrival is given to him personally or delivered at his address.
- 5.—After the termination of the transit as defined in Condition 4, the Managing Committee will thenceforth, and subject to these conditions, hold the merchandise as warehousemen, subject to the usual charges.
- 6.—After the termination of the transit, merchandise carried or conveyed by the Managing Committee will be subject, in addition to the charge for carriage, to further charges for demurrage of 3s. per truck per day, and 1s. per sheet per day, or, in the case of such merchandise as is unloaded from the truck, to reasonable charges for rent or services performed, until they are removed from the Managing Committee's premises; and similar charges will be made with respect to merchandise, the delivery of which cannot be effected by the Managing Committee, in consequence of incorrect or insufficient address. Provided that no such charges shall be made if the Managing Committee have not given proper opportunity for the removal of the merchandise or the discharge of the truck.
- When specially constructed trucks are used 6s. per truck per day demurrage will be charged on trucks constructed to carry 15 tons and under 20 tons, 12s. per truck per day on trucks capable of carrying 20 tons and under 30 tons, and 20s. per truck per day on trucks capable of carrying 30 tons and above.
- 7.—Consignors ordering trucks and failing to load and order them away within 24 hours after such trucks shall be ready for loading at the station or siding to which they were ordered, will be subject to charges of 3s. per truck per day and 1s. per sheet per day for demurrage, for every day or fraction of a day they shall be detained after the expiration of such 24 hours.
- When specially constructed trucks are ordered 6s. per truck per day demurrage will be charged on trucks constructed to carry 15 tons and under 20 tons, 12s. per truck per day on trucks capable of carrying 20 tons and under 30 tons, and 20s. per truck per day on trucks capable of carrying 30 tons and above.
- 8.—All merchandise delivered to the Managing Committee will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such merchandise, and also to a general lien for any other moneys due to them from the owners of such merchandise, upon any account; and in case any such lien is not satisfied within a reasonable time from the date upon which the Managing Committee first gave notice to the owners of the merchandise of the exercise of the same, the merchandise may be sold by the Managing Committee by auction or otherwise, and the proceeds of sale applied to the satisfaction of every such lien and expenses.
- 9.—All perishable articles refused by the Consignee, or at the place to which they are consigned; or consigned to a place not known by the Managing Committee's agents or servants, or insufficiently addressed, or not paid for and taken away within a reasonable time after arrival, if addressed to be kept till called for, may be forthwith sold by auction or otherwise, without any notice to Sender or Consignee, and payment or tender of the net proceeds of any such sale after deduction of freight charges and expenses shall be accepted as equivalent to delivery.
- 10.—The Managing Committee will not be liable for any loss of market.
- 11.—The Managing Committee will not be liable for any indirect or consequential damages in respect of merchandise lost, injured, or delayed.
- 12.—The Managing Committee will not be liable for any loss of or damage to, or delay of merchandise resulting from their being not properly protected by packing.
- 13.—The Managing Committee will not be liable for any loss of or damage to, or delay of merchandise resulting from their being not properly or not sufficiently addressed.
- 14.—The Managing Committee will not be liable if merchandise be lost, injured, or delayed, owing to a defect in a wagon not belonging to the Managing Committee, unless such defect arose from the neglect or default of the Managing Committee or their servants, or unless the Managing Committee or their servants were guilty of negligence in not discovering such defect.
- 15.—In respect of merchandise consigned to places beyond the limits of the Managing Committee's free delivery, the responsibility of the Managing Committee will cease when such merchandise has been delivered over to another carrier in the usual course for delivery.
- 16.—In all cases where the Managing Committee's charges are not prepaid, the merchandise is accepted for carriage only upon the condition that the sender remains liable for the payment of the amount due to the Managing Committee for the carriage of such merchandise, without prejudice to the Managing Committee's rights, if any, against the Consignee or any other person.
- 17.—In respect of traffic of every description which loses weight in transit through drainage, evaporation, or any cause beyond the Managing Committee's control, carriage shall be paid upon the weight ascertained at the sending station.

(Reverse Side.)

SOUTH EASTERN AND CHATHAM RAILWAY.

1232

708,843

CONSIGNMENT NOTE.

Station, _____ 190

The SOUTH EASTERN AND CHATHAM RAILWAY COMPANIES MANAGING COMMITTEE are requested to receive and forward, as per address and particulars on this Note, the undermentioned Goods, on the conditions stated on the other side.

Sender_

Address

Printed by Messrs. Conquest & Co. Limited, "The Artillery," London, S.E.

[illegible]

NOTE.—Goods which may be required "TO WAIT ORDER" at any particular Station must be so consigned on this Note.

(Reverse Side.)

Notices and Conditions with respect to the Receiving, Forwarding and Delivering of Goods by the South Eastern and Chatham Railway Companies Managing Committee, subject to which Notices and Conditions, and not otherwise, the Managing Committee will Receive, Forward and Deliver the same.

1.—The Managing Committee will not be liable for loss of, or injury done to any Goods, matters, or things, described in the Carriers' Act, 1830, unless the particular Articles and the value thereof be declared, and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred.

2.—The Managing Committee will not be answerable for the loss or detention of, or for damage to any Goods, arising from fire, civil commotion, tempest, or act of God.

The Managing Committee will not be liable for the loss of, or injury to, or delay of any Articles, Goods or things in or about the receiving, forwarding, or delivery thereof, except upon proof that such loss, injury or delay was occasioned by the neglect or default of the Managing Committee, or its servants. The Managing Committee will not be liable for any indirect or consequential damages in respect of Goods lost, injured or delayed.

Nor for loss of, or injury to, any Articles, Goods, or things put into Returned Wrappers, Boxes, Packages, Cases, Baskets, &c., marked, described, delivered, or represented as "Empties."

Nor for loss of, or injury to, Fruit, Fish, Meat, Poultry, Game, or other perishable Articles, arising from the perishable nature of such Articles, or from the same not being taken away forthwith on arrival at the Station.

Nor for injury to any Marbles, Musical Instruments, Furniture, Toys, or other Articles, which, from their brittleness, fragility, or delicacy of construction, are more than ordinarily hazardous, unless they shall be declared in writing, and an appropriate rate or charge for the carriage thereof be paid, or contracted to be paid (at the option of the Managing Committee).

3.—The Managing Committee will not be liable for any loss or detention of, or damages to, or non-delivery or mis-delivery of, any Articles, Goods, or things, arising from their being insufficiently or improperly packed, marked, directed, or described, or from their containing a variety of Articles liable by breaking to damage each other; nor for leakage arising from bad casks or cooperage, nor for loss, waste, or damage from fermentation.

Nor for loss of, or injury to, any Articles, Goods or things, after the arrival thereof, in any case in which such Articles, Goods, or things are to be left till called for, or are deliverable to order, or shall have been warehoused for the accommodation of any of the parties interested therein. No claim for deficiency, damage or detention will be allowed, unless made within three days after the delivery of the Goods; nor for loss, unless made within seven days of the time when they should have been delivered.

4.—All Goods from whomsoever received, or to whomsoever belonging, shall be subject to a lien for money due to the Managing Committee for the carriage thereof and other charges upon such Goods, and also to a general lien for any other moneys due to the Managing Committee from the Consignors, Consignees, or Owners of such Goods upon any account, and in case such lien is not satisfied within a reasonable time from the date upon which the Managing Committee first gave notice of the exercise of the same, the Goods may be sold by the Managing Committee by auction, or otherwise, and the proceeds of the sale applied to the satisfaction of every such lien and expense.

5.—Fruit, Fish, Meat, Poultry, Game, and other perishable Articles, not taken away, or not paid for forthwith after arrival, if directed to be kept till called for, or to the like effect, or without any legible and intelligible directions, or directed to a place not known, or refused by the person or at the place to whom or where directed, may be forthwith sold by auction, or otherwise, for the benefit of all concerned; and payment or tender of the net proceeds of any such sale, after deduction of the moneys due in respect of the carriage of the said Goods, and of all charges and expenses of sale, shall be accepted as equivalent to delivery.

6.—The Managing Committee will not be liable for any loss of market. The Managing Committee will not be responsible except by special contract for the non-arrival or non-delivery of any Goods or Articles within any particular time.

7.—The delivery of Goods at the Station will be considered to be complete, and the responsibilities of the Managing Committee to terminate, when the Goods shall be placed in the care of the Consignee, his agent or servant. The Managing Committee will not be liable in respect of the removal of Goods into or out of the Consignor's or Consignee's Wagon, Ship, Craft, Wharf or Premises, which removal will be at his risk and expense; nor will the Managing Committee be liable in respect of Goods left on their premises until called for, or to order, or left or warehoused for the convenience of the Consignor or Consignee.

8.—All Goods left until called for, or to order, or suffered to remain upon the Managing Committee's premises, or, at the option of the Managing Committee, left in the Managing Committee's Wagons, will so remain at the risk of the owners, and after twenty-four hours from the arrival will be subject to the usual charges of the Managing Committee, if warehoused, or to the usual charges for demurrage, if left in Wagons.

9.—In all cases in which the Managing Committee deliver goods beyond the limits of their Station to the Consignee, at the place of destination, the delivery of the Goods will be considered complete when the same are unloaded out of the Wagon, Van, Dray, or Cart, and placed at the door of the Consignee. The cellaring or warehousing of them afterwards will be at the owner's risk. The Managing Committee will consider themselves at liberty to deliver Goods, and to charge for such delivery in all cases in which the senders of the Goods do not give Notice to the Managing Committee that the Goods are to be taken from the Station by the Consignees.

10.—The Managing Committee will not be liable in respect of Goods destined for places beyond the limits of the Managing Committee's Railway or ordinary delivery; and, as respects the Managing Committee, their responsibility will cease when such Goods shall have been delivered over to another Carrier, in the usual course, for further conveyance. The Managing Committee undertake, if practicable, to de-

liver such Goods to another Carrier, to be carried by such other Carrier on the same terms and conditions as are herein contained, or, at the Managing Committee's discretion, to suffer them to remain on their premises, pending communication, at the owner's risk. Any money which may be received by the Managing Committee as payment for the conveyance of Goods beyond their own limits, will be so received only for the convenience of the Consignors and for the purpose of being paid to the other Carrier.

11.—The Managing Committee will not be bound to receive or forward any Packages or Parcels, the contents of which shall not at the time of delivery for conveyance be declared, if required.

The Managing Committee will not be answerable for the loss or detention of, or for damage to, any Goods which may be untruly or incorrectly declared or described in the Declaration or Receiving Note furnished to the Managing Committee. All parcels of Goods and Packages, the contents of which are not specifically declared by the senders, will be charged in the highest class.

The Managing Committee will not, except by Special Contract, receive for carriage any Gunpowder, Aquafortis, Oil of Vitriol, Lucifer Matches, or any other Goods which, in the judgment of the Managing Committee, may be of a dangerous nature, such as Spirits of Salt, or any explosive, inflammable, or corrosive Article, or any Articles likely to create damage by, or in consequence of, fermentation; and persons consigning such Goods, except as aforesaid, will (in addition to a penalty of £20) be held liable for any loss or damage that may happen, or be occasioned thereby, or by reason thereof; and the Managing Committee will not, except as aforesaid, be liable for loss of, or injury to, any such Goods.

All Goods left with the Managing Committee, and not taken away after fourteen days' notice to the Consignor or Consignee, and all Empties not taken away within fourteen days after arrival, may be sold, and the proceeds, after defraying expenses, and any claim of the Managing Committee, will be handed over to the owner upon application.

12.—The Managing Committee do not pledge themselves to the time of starting or arrival of the Trains, nor will they be liable for loss of market arising from delay, overcarriages or detention of any Train, whether in starting or at any of the Stations, or in the course of the journey. The Managing Committee do not undertake to send Goods by any particular Train, if they cannot be conveniently sent by that Train, notwithstanding the goods may have been received at the Station.

13.—In all cases where the Managing Committee's charges are not prepaid, the Goods are accepted for carriage only upon the condition that the sender remains liable for the payment of the amount due to the Managing Committee for the carriage of such goods, without prejudice to the Managing Committee's rights, if any, against the Consignee or any other person.

14.—In respect to traffic of every description which loses weight in transit, through drainage, evaporation, or any cause beyond the control of the Managing Committee, carriage shall be paid upon the weight ascertained at the sending Station.

15.—The Managing Committee will not be liable if Goods are lost, injured, or delayed owing to a defect in a Wagon not belonging to, or provided by, the Managing Committee, unless such defect arose from the neglect or default of the Managing Committee, or its servants, or unless the Managing Committee or its servants were guilty of negligence in not discovering the defect.

16.—NOTICE.—The Railway Clauses Consolidation Act (3 Vic. c. 20) enacts by Section 105, that "No person shall be entitled to carry, or to require the Managing Committee to carry, upon the Railway, any Aquafortis, Oil of Vitriol, Gunpowder, Lucifer Matches, or any other Goods, which in the judgment of the Managing Committee may be of a dangerous nature; and if any person send by the Railway any such Goods, without distinctly marking their nature on the outside of the Package containing the same, or otherwise give notice in writing to the bookkeeper, or other servant of the Managing Committee, with whom the same are left, at the time of so sending, he shall forfeit to the Managing Committee £20 for every such offence, and it shall be lawful for the Managing Committee to refuse to take any Parcel that they may suspect to contain Goods of a dangerous nature, or require the same to be opened to ascertain the fact."

No Station Master, or Clerk, or other Officer, or Servant of the Managing Committee, has any authority to dispense with or vary any of the aforesaid Conditions, as to the receiving, forwarding, and delivering of Goods.

N.B.—All Goods conveyed by the Managing Committee by Sea or on the Continent, are conveyed subject to the Special Conditions issued by the Managing Committee for such conveyance.

17.—The yard gates at the Bricklayers' Arms, Blackfriars, and Stewart's Lane Stations will be closed at 6 p. m. (Saturdays excepted, when they will be closed at 3 p. m.), and no Goods will be admitted after these hours except under special circumstances.

18.—WHARVES ON THE THAMES.—The Managing Committee's Wharves on the Thames, where Goods of every kind are received, are as follows:—

Angerstein's Wharf, near Charlton (between Greenwich and Woolwich), for Stations on the South Eastern Section. Orders for Lighterage should be addressed to the Wharfinger, Angerstein's Wharf, Charlton, S. O., Kent; or to the Superintendent, Bricklayers' Arms Station, London, S. E.

Blackfriars Wharf, Blackfriars Bridge, S. E., for Stations on the Chatham Section. Orders for Lighterage should be addressed to the Thames Steam Tug and Lighterage Company, Limited, 1, Fenchurch Buildings, London, E. C.

No single article weighing more than 30 cwt., or of a greater length than 24 feet, can be dealt with at Blackfriars Wharf.

19.—Orders for the Collection or Delivery of Goods to or from Bricklayers' Arms, Blackfriars, and Stewart's Lane Stations, should be addressed to the Superintendent at each respective Station.

C. SHEATH,
Secretary to the Managing Committee.

(Obverse Side.)

FORM 9

Canadian Pacific Railway Company

This Company will not be responsible for any Goods mis-sent, unless they are properly addressed and consigned to a Station on its Railway. Rates, Weights, Quantities and description of goods entered on Receipts of Shipping Bills are not binding on the Company, and will not be acknowledged. All goods going to or coming from any place out of Canada will be subject to Customs Charges, etc.

Date 190

RECEIVED from _____
the undermentioned Property, in apparent good order, addressed to

_____ Station
to be forwarded by the said Company to _____
subject to the terms and conditions of the current tariff and classification and to those stated above and to those upon the other side of this Shipping Bill, which is delivered by the Company and accepted by the Consignor or his Agent as the basis upon which this receipt is given for the said property, and it is agreed to by the Consignor as a special contract in respect thereof.

Subject to Car Service Rules

No. OF PACKAGES AND SPECIES OF GOODS.	MARKS.	QUANTITY OR WEIGHT, LBS. SAID TO BE.	BACK OR ADVANCE CHARGES.

Attention is called to the special contract above mentioned, and printed on the other side of this Shipping Bill.

Agent C. P. R.

(Reverse Side.)

1. It is agreed that the CANADIAN PACIFIC RAILWAY COMPANY, hereinafter called "the Company" is not to be responsible in respect of any goods carried or intended to be carried on its railway, unless they are accepted for by a duly authorized agent of the Company.
2. Or for or in respect of the loss of, or damage to, Money in Cash or Bills, Promissory Notes, Bills of Exchange, or Securities, Jewellery, Trinkets, Rings, Precious Stones, Gold, or Silver, manufactured or unmanufactured, in any form whatsoever; or Plated Articles of any description; Clocks, Watches, Time-Pieces, Marble in any form, or state Statues, Lace, Furs, Silk, or a manufactured or unmanufactured state, whether wrought up or not wrought up, with any other materials; Writings of all kinds, Title Deeds, Plans, Paintings, Maps, Engravings, Pictures, or other valuables; or any damage to Marble, Crockery, Stoneware, China, Glass, Wearing Apparel, Musical Instruments, Furniture, Toys, Castings of any kind, Cast Iron Works, Stoves, Stove Furniture, or any hazardous or brittle article, in package or otherwise, or Fresh Fish, Fresh Meat, Dressed Hogs and Poultry or any other perishable articles, or any Engine, Boiler, Cylinder, or Machinery of any kind; and if any property of the kind mentioned in this clause be accepted or carried, it is entirely at the risk of the owner, without liability direct or indirect on the part of the Company in regard to it.
3. The Company is not to be liable for damages occasioned by delays caused by storms, accidents, overpressure of freight, or unavoidable causes, or by the weather or wet, fire, heat, frost, or delay of perishable articles, or from civil commotion.
4. Or for loss of or damage to any package or its contents insufficiently or improperly packed, marked, or directed, or containing articles liable to breakage, or for loss of or damage to any case of Boots or Shoes, or any case containing articles liable to peculation or fraudulent abstraction, unless such case or package is strapped with iron or wood, or otherwise securely protected; or leakage of any kind, or loss of liquids arising from any cause whatever. Oil, or Molasses, or Liquids in demijohns, if carried, will be entirely at the risk of the owners or parties by whom or to whom they are consigned without any liability whatever on the part of the Company in respect thereof.
5. The Company is not to be liable for loss of or damage done to goods put into return wrappers or boxes, or packages described as empties; or for any goods left until called for or to order, and warehoused for the convenience of the parties to whom they belong, or by or to whom they are consigned; and in all cases where herein not otherwise provided, the delivery of the goods shall be considered complete, and the responsibilities of the Company shall terminate when the goods are placed in the Company's sheds or warehouse (if there be convenience for receiving the same) at the final destination, or when the goods shall have arrived at the place to be reached on the said Company's railway. The warehousing of all goods will be at the owner's risk and expense; and if the Company is unable to store or warehouse goods received by it then it may place such goods in any warehouse that may be available, at the risk and expense of the owner of the property so stored, and all charges for storing, warehousing, and conveyance shall form an additional lien on said goods.
6. The Company's obligation to carry and deliver Lumber and Coal, Bricks and any other goods carried by the carload shall be fulfilled and the Company's responsibility in respect thereof shall cease upon the car in which they are carried being detached from the train at the station on the Company's lines to which it is consigned, or at the station where, in the usual course of business, it leaves the Company's lines. The expression "the Company's lines" in this document means one or more of the lines of railway operated by the Company, and the expression "other lines" means a railway or railways operated by some other Company or Companies.
7. The Company is not to be responsible for any deficiency in weight or measure of grain or other farm or garden product or feed in packages or in bulk, or for injury thereto by heating or for loss or deficiency in the weight, number or measure of Lumber, Coal or Iron of any kind, carried by the carload; or for shrinkage of any kind of sugar or short weight of the same, unless the damage to the package be shown to have happened whilst in the possession of the Company.
8. Every sender of any dangerous article will be held accountable for any damage arising therefrom, unless the package containing such article be described as dangerous upon the said package and upon the shipping bill, and in no case will the Company be liable for the loss of or damage to any such article.
9. All goods, from whomsoever received, and to whomsoever belonging, shall be subject to a general lien, for the carriage of and for all charges against these particular goods, and also for any general balance that may be due by the owners of such goods to the said Company. And, if in six weeks after notice shall have been given that such goods are detained for any such claim of the Company, the money due be not paid, the goods may, at the discretion of the Company, be sold by auction or by private sale, to defray said claims, and all freight and charges, including the cost of the sale thereof. But Fish, Fruit, Meat, Dressed Hogs, Poultry, and all other perishable articles, may be disposed of at the discretion of the Company, immediately after giving above notice, if said claim is not paid at once.
10. It is hereby expressly agreed that the Company does not contract for the safety or delivery of any goods, except on the Company's lines, and where a through rate is named on the bill of lading it is on the understanding that the Company is to act only as agent of the owner of the goods as to that portion of the said rate required to meet the charges on such other lines, and if any goods be consigned to a place on other lines, then, unless some connecting carrier be named on the other side of this document, the goods are to be handed over by the Company for further conveyance to such carrier and at such place on the Company's lines as the Company may select; if one be so named, the Company will hand over such goods to the one so named, if practicable, and in either case the Company, in so handing over the goods, shall be held to be the agent of the owner, it being expressly agreed that the responsibility of the Company in respect of any loss, misdelivery or detention of, or damage or injury, by any means whatsoever, to any goods carried under this contract, shall cease as soon as the Company shall either deliver them to the next connecting carrier for further conveyance, or notify such carrier that it is ready to do so.
11. That all property consigned for at a through rate, or otherwise, to or from places beyond the Company's lines shipped by water, shall, while not on the Company's lines, or in its sheds or warehouses, be entirely at the owner's risk. In case of loss or damage to goods carried under this contract, the Company shall be given the benefit of any insurance which the owner of said goods may have, and shall be subrogated in all the rights thereto before any demand shall be made on the Company in respect of such loss or damage.
12. There shall be no claim for damage for loss of, or detention of, or injury or damage to any goods for which the Company is accountable, unless and until notice in writing, and the particulars of the claim of said loss, damage or detention, are given to the Station Freight Agent at or nearest to the place of delivery, within thirty-six hours after the goods, in respect of which said claim is made, or such portions of them as are not lost are delivered.
13. Storage will be charged on all goods remaining in the Company's sheds or warehouses over twenty-four hours after their arrival.
14. (a) In every case in which goods are to be loaded or unloaded by the Consignor or Consignee, and it is not done promptly after car or cars have been placed for loading or for unloading then a car rental or car storage charge will be payable for the delay and such charge shall constitute part of the charges against the goods and be recoverable in all respects as if it were part of the charge for carriage.
- (b) In every case in which goods are to be unloaded by the Consignee and are not unloaded within forty-eight hours after the car has been placed for unloading, the Company or the carrier in whose possession the goods may be, may at the owner's risk and expense unload and warehouse or deposit the same at such places as shall suit its convenience and thereupon the goods shall be subject to lien for all charges whatsoever, including charges for unloading, if done. Goods unloaded by owner shall not be stored on the railway premises without the station agent's permission. Whether unloaded by owner or carrier, the goods stored on the railway premises shall be subject to storage charges and shall be at the sole risk of owner as to damage to them by fire, however caused, and as to every loss or damage whatsoever, and shall be removed from the railway premises forthwith upon notice.
15. The Company shall not in any case, or under any circumstances, be liable for loss of market or for claims arising from delay or detention of any train in the course of its journey, or at any of the stations on the way, or in starting, and the Company does not undertake to load or send goods upon or by any particular train, if there be an insufficient number of cars at any station or if the cars cannot be conveniently used for the purpose, or if, from any cause, cars loaded at a station are unable to be sent on by the train passing, or starting from such station and any loss or damage for which the Company may be responsible shall be computed upon the value or cost of the goods or property at the place and time of shipment under this shipping bill.
16. Live stock must be fed by the owner, or at his expense, while in transit, and is taken entirely at his risk of loss, injury, damage and all other contingencies whether in loading, unloading, conveyance or otherwise, and under the conditions contained above. All live stock is to be carried upon the following further special conditions:—
- I. The owner of any animal UNDERTAKES all risk of loss, injury, damage and other contingencies in loading, unloading, transportation, conveyance, or otherwise, howsoever, no matter how caused.
- II. The Railway Company DOES NOT UNDERTAKE TO FORWARD any of the animals by any particular train, or at any special hour, neither shall it be responsible for the delivery of animals within any certain time, or for any particular market.
- III. When FREE TRANSPORTATION is given to any person in charge of any animal, it is on the express condition that the Railway Company is NOT RESPONSIBLE for any negligence, default, or misconduct of any kind, on the part of the Company or its servants or of any other person or persons whomsoever causing or tending to cause the death, injury, or detention of any person or persons so travelling free, and whether such person or persons be so carried free on any regular Passenger Train, or any other train whatsoever, the person so travelling free takes all risks of every kind no matter how caused.
17. The charges of all kinds on all goods carried, must be paid before the goods will be delivered, and the Company is not to be accountable for the correctness of any amounts charged as "back or advance charges" on Freight, etc., by other roads, companies or individuals.
18. It is hereby agreed and understood that the Company, in the transportation and handling of grain of any kind, at all places of trans-shipment, and at all places or points to which the grain is consigned, where the Company has elevators or warehouses, the grain, at the discretion of the Company's agent, may be deposited in the same bin or compartment with other grain of the same grade in the elevator or warehouse, in which event, the person entitled to claim the grain shipped shall become entitled to claim only grain of the same kind and grade, but if the grade of the grain be deteriorated there must be for which the Company is not responsible, the customer must accept the grain as it is.
19. Traffic via the Company's Lake Lines is subject to Average as per York-Antwerp rules or American Lake Adjustment, at option of the Company.
20. All the provisions of this contract shall apply to every carrier to whom goods may be delivered for carriage under it, as fully as to the Company.

CANADIAN PACIFIC RAILWAY OFFICE,
Montreal, January, 1903.

W. R. MacINNES,
Freight Traffic Manager.

The Canadian shipping order reads identical with the shipping bill except that in lieu of the word "Received," it reads "The Canadian Pacific Railway Company will please receive"; this shipping order is signed by the Consignor.

Carmack Amendment Before the I. C. C.

COMMISSIONER E. E. WILLIAMSON, of the Receivers' and Shippers' Association Company of Cincinnati, has raised the matter of the Carmack amendment before the Interstate Commerce Commission in the following letter:

CINCINNATI, Ohio, August 31, 1906.

MR. EDWARD A. MOSELEY,
Secretary Interstate Commerce Commission,
Washington, D. C.:

DEAR SIR—A portion of Section 20 of the Interstate Commerce Act, as amended June 29, 1906, reads as follows:

"That any common carrier, railroad or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed:

Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law."

Our view of this section is that it does not simply prohibit the initial carriers from entering into a contract not to be responsible for loss or damage to shipments beyond its own rails, as heretofore, but that it prohibits the initial carrier, either by contract, receipt, rule or regulation, from exempting itself or its connections from any loss, damage or injury to interstate shipments for which is given a receipt or bill of lading.

We take it that this section of the statute prohibits interstate carriers from limiting their liability, as was heretofore their custom, in the absence of an Act of Congress.

The Official, Western and Southern Classifications each contain rules and regulations whereby the carriers seek to exempt themselves from the liability for loss, damage or injury to property by demanding 20 per cent. in addition to the published tariff rates, in case the shippers do not accept the conditions of carriage imposed by the carriers.

The carriers are issuing bills of lading or contracts in accord with said rules and regulations, as provided for in the respective Classifications enumerated. In our opinion the carriers are thus violating that portion of Section 20 of the amended Act to Regulate Commerce quoted above.

Another portion of Section 20 of the Interstate Commerce Act, amended June 29, 1906, reads thus:

"That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to Regulate Commerce or any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them."

For and in behalf of this association and its members, the Commission is respectfully urged, at as early a date as practicable, to make a request on the Attorney-General of the United States, alleging violation of the quoted provision of the Interstate Commerce Act, and asking that he make application to the circuit and district courts of the United States having jurisdiction, to the end that said courts may issue a writ or writs of mandamus commanding each and every carrier parties to the Official, Western and Southern Classifications to comply with the provisions of Section 20 of the Act to Regulate Commerce above quoted in the first paragraph of this letter, by abrogating the rules and regulations of the respective classifications now in conflict therewith, and in the future to issue contracts and bills of lading only in strict accord therewith.

We take it that the copies of the Official, Southern and Western Classifications which have been filed with the Com-

mission, according to law, by the various carriers, will be considered sufficient evidence of the rule and practice of the carriers, and that the Commission can make a request upon the Attorney-General on basis of the information now in its possession, without any formal hearing.

Yours very truly,

E. E. WILLIAMSON,
Commissioner.

Mr. Williamson received the following reply from Secretary Moseley:

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
WASHINGTON, SEPTEMBER 20, 1906.

Mr. E. E. Williamson, Commissioner, Receivers and Shippers' Assn. Company, Cincinnati, Ohio:

DEAR SIR—Your communication of the 31st ultimo was duly received, and has had such consideration as, in view of the great over-press of work arising under the new law, the Commission has been able to give.

The liability provision of the new law and its effect upon the 20 per cent. additional rate provided for in the freight classifications raise a question which the Commission would hardly undertake to determine without the aid of argument on behalf of the shippers on the one side and on behalf of the carriers on the other. It is understood that this subject is being considered by the carriers themselves, and it is not impossible that the carriers will take action resulting in eliminating the 20 per cent. addition to the rate on account of common law liability.

It might be advisable to allow some further time to elapse before specific action is taken by the shippers in the matter you mention.

Very respectfully,

(Signed) EDW. A. MOSELEY, Secretary.

The inference drawn from Mr. Moseley's reply is that the carriers may take action which will result in the elimination of the 20 per cent. additional rate on account of common law liability. In case the carriers do not take such action it is reasonable to conclude that the shipping interests will push the matter to a conclusion. Apparently the Commission does not question the facts in the case, and, therefore, there will be no occasion to have a formal hearing to submit evidence and take testimony, but the Commission does desire that both the shippers and the carriers submit arguments covering the law points involved.

Freight Held Up by New Law

The railroad rate law passed by the last Congress is holding up 1,000 loaded coke cars in the Connellsville, Pa., region, and fully 10,000 freight cars throughout the country.

This is said to be due to the fact that freight rate schedules must be published before cars can be moved.

The Connellsville shipment was loaded for El Paso, Tex. It will take thirty day to hold meetings to arrange a schedule of rates. In the mean time shippers are demanding cars.

Railroad officials allege that the shortage is entirely due to the features of the rate law.

Rates have to be adjusted before shipments can be made according to the law.

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WE maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from subscribers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers and carriers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically.

Subscribers who do not receive their copies of **FREIGHT** promptly each month will oblige the publishers by acquainting them with that fact without delay.

WHILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

A CHANGE of heart has come over the New York *Sun*. Heretofore it has had no kind word to say of the Interstate Commerce Commission. Now it wields the editorial pen with flourishes of commendation for the Commission and its first month's work.

Strange the *Sun* should change its views. No, it is not strange! Heretofore the Commission has heard the plaintive voice of the shippers.

If You See It in the "Sun" It's So—So Nay, more, it has heeded and has given such measure of relief as it could give under its limited powers. Now, in the light of the *Sun*,

all is changed. There must be a reason. Is it not that the Commission has its ear to the ground and hears the rumblings of the distant railroad train and those who train with it? Judging from the few decisions which the Commission has made, it has not only heeded these rumblings, but also is giving relief to the carriers and not to the shippers and the public.

No wonder the *Sun* has changed!

IT is quite evident, from the sale of the first edition of the **FREIGHT CLAIM INDEX AND RECORD**, that Mr. W. R. Campbell's work was needed by the shipping public. Traffic managers in particular have been quick to appreciate the value of the book. It is something practical. It saves time and annoyance. It is simple and it is systematic. Whether a shipper has few or many claims the **FREIGHT CLAIM INDEX AND RECORD** is invaluable to him. Through its use many controversies with carriers—oftentimes caused by misunderstandings—will be avoided, and no claim is so intricate that its intelligent settlement cannot be accelerated by following Mr. Campbell's system.

If you have not yet seen a copy of the **FREIGHT CLAIM INDEX AND RECORD** it will be sent to you "on approval" on receipt of a request to do so by the Freight Publishing Company, No. 116 Nassau street, New York. The price of the book is \$5.

THE exercise by the Commission of its discretion in permitting the withdrawal of export cotton rates from the operation of the law has nothing in it to be commended. In fact, there seems to have been but one ground upon which the application was based, that ground being that, as cotton export rates had never been subject to the Act to Regulate Commerce, they ought now as well to be free. What form of discretion is it that is being used? Surely it is not the dis-

Decision of the I. C. C. on Export Cotton Rates

cretion which we are accustomed to hear denominated as "the perfection of reason."

The order and ruling of September 15 furnishes a concrete example of one difference between the old and the new law. The old law read "That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based." The new law provides that the report "shall state the conclusions of the Commission." It is well the old law is not in force, for there were no facts, or findings of facts, in the matter of export cotton rates; simply fancy, nothing more.

But let us rejoice and be exceedingly glad, for "Discretion is the salt and fancy the sugar of life; the one preserves, the other sweetens it." This discretion of the Commission augurs well to preserve the life of "midnight" and "after dinner" rates, and to sweeten the tempers and dispositions of the persistent violators of the law.

Even admitting that the exercise by the Commission of its discretion regarding the filing of export rates upon cotton is proper, the denial of the same privilege to cottonseed products and lumber raises a most interesting question. The three commodities and many others, as far as the filing and publication of rates are concerned, stand upon the same basis. It has been the custom to refer to the Commission's power to waive the provisions of the law as "discretion." As applied to public functionaries, this means a power or right conferred by law of acting officially in certain circumstances according to their own judgment and conscience. It does not mean the exercise of absolute will—there must be a reason. The application of the carriers was allowed as to one commodity and denied as to another. The question is whether or not the carrier has received in this grant and denial, under the decisions of the court, due process of law. It would appear clearly to fall within that class of cases where the law of the land has not prevailed. The Supreme Court has said:

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

It needs no argument to show that the lumber exporter is discriminated against by the Commission, nor does it need any argument to show that the road carrying cottonseed products is discriminated against in favor of a road carrying only cotton for export. A repetition of a few more orders where such pretended discretion is used will result in a greater number of discriminations than have heretofore existed.

President Roosevelt in his last annual message, referring to the subject of railway rates and practices, said:

"Illegal transactions often occur under the forms of law. It has often occurred that a shipper has been told by the traffic official to buy a large quantity of some commodity, and then, after it has been bought, an open reduction is made in the rate to take effect immediately. The arrangement resulting to the profit of one shipper and the one railroad and to the damage of all its competitors, for it must not be forgotten that the big shippers are at least as much to blame as any railroad in the matter of rebates."

It would appear that opportunity for the "one shipper" and the "one railroad" to accomplish just those wrongs which the President pointed out has been given by the order of the Interstate Commerce Commission in the matter of export cotton rates.

It is to be seriously regretted that the Interstate Commerce Commission should hold "sessions behind closed doors." Soon it will become a practice. Soon Star Chamber proceedings will be the rule, and not the exception. Recently that body saw fit to give a private audience to the coastwise water carriers. No one knows just what took place, except from the "statement" which was given out afterward? Who are the mighty water carriers, that they should be permitted to state their opinions and make their requests in secret? Who are these mighty Interstate Commerce Commissioners, that they should grant a request for a secret conference? Have the public no interest in these matters? Are the people to be advised by means of "statements" emanating from the Commission of what is being done? We find nothing in the law which either commands public or allows private hearings. If necessary, the law ought to be amended in this behalf. If the requests of the water carriers cannot stand the light of day and publicity, their request had better be unstated. One of the primary objects of the law, as we read it, is that there shall be publicity, and here is the body charged with the execution and enforcement of the law putting itself within locked and barred doors to hear the water carriers.

Only two good purposes can be divined for such procedure. First, the "statement" is a great help to the newspaper reporter; he can loaf during the hearing and get it all at the end from the official and perhaps inadequate account of what took place. Second, it will doubtless help to solve one of the most troublesome questions. Lawyers, legislators, editors and courts have speculated as to which of the three grand divisions of the Government the Interstate Commerce Commission belongs. Some have solved the question by stating that it is a branch of the executive department; others prefer to denominate it a branch of the legislative, and others say that it belongs properly in the same class as the judiciary. With Star Chamber hearings the question is easy, for the schoolboy knows

Star Chamber Proceedings Are Objectionable

that under such circumstances the Commission will belong to the autocratic department of our Government.

THE request of the express companies to be allowed sixty or ninety days additional time in which to file their tariffs, means deeper than appears upon its face. At the informal hearing it was admitted that every agent had in his office the rates from that point to all other points in the United States. And yet to compile these rates is to require a period of three months. It occurs to us that

**Beneficent Express
Companies Want
More Time**

no such time is necessary under the circumstances. A reply to an inquiry of this kind brought out the vaudeville performance that the companies were making joint rates and doing away with those rates which they considered a violation of the recent law. Like the Pennsylvania Railroad, the express companies have heretofore put up a united claim that they were engaged in the transportation business more as benefactors than for financial emoluments, but it seems that they have found of their own accord some unreasonable charges and some discriminatory rates. They promise to put out a perfect rate book, free from unreasonable and unjust charges and from discriminatory classifications of favored merchants. How very ungainly the rate book will look when the classification is rearranged, the unreasonable rates reduced and the discriminatory charges abolished

RECENTLY, by way of reply to a statement of Commissioner Cockrell, the general counsel of the United States Express Company, with sanctimonious face, stated that he had never heard of any one objecting to unreasonable charges made for the transportation of property by express.

**Express Charges
Not Excessive—
Says Mr. Platt**

Mr. Platt probably has or had a frank, and, of course, owning one of those valuable documents, he does not know what it costs to send an article by express. We believe Mr. Platt is not an employe of the United States Express Company who would be likely to hear of unreasonable, unjust or discriminatory charges. The employes who hear the objections to the methods of doing express business and to their rates, are the agents at points of shipment and destination. To Mr. Platt is cordially recommended a perusal of the recent articles which have been published in *FREIGHT*, and it is hoped that he will not only ascertain that many of the charges are unreasonable, but that the word "Discrimination" is written upon every page of every book of express rates. If he cannot find information enough in the articles to which we refer, we will undertake to give him additional data from merchants whose business is such that they are compelled to use express facilities.

NEW BOOKS

Moore on Carriers. Wm. Bender & Co., Albany.

This treatise of the law on carriers is practically a digest of the law relating to those engaged as common carriers as that law is found in the decisions of the courts of the United States, the several States, England and Canada. The subjects considered are carriers in general as distinguished from common carriers, of which numerous examples are given. The duties and liabilities of the carriers of goods, when their liability commences and when it terminates, receive careful consideration from the numerous decisions which result from facts and circumstances slightly different from each other. The liability of the carrier for delay in transportation and for loss and damage to the goods intrusted to it receives adequate notice. In considering the liability of the carrier as a warehouseman, a clear distinction is made between the two lines of decisions, both of which it is well to keep in mind when doubt arises as to whether or not the carrier is liable as such or as a warehouseman. The relation of carriers to each other, the measure of damages, the lien of the carriers, their duties as carriers of live stock and carriers of passengers, are exhaustively treated. The concluding chapter upon interstate transportation is *apropos*. This subject is one about which comparatively little is known, but about which the public are seriously inquiring.

The volume is one which belongs upon the shelf of every practitioner, and ought to be at the hand of the lay user of transportation facilities. The practitioner will know how to discriminate between cases to which reference is made, while the layman will hunt for a case identical with the one which he has.

The work is not exhaustive, for the treatment of water carriers could be readily enlarged without injury to the subject; so also could the intercorporate relations of carriers receive more extended treatment. Several cases of importance have not found their way into the volume. The case of *Hughes v. Penna. Co.* (202 Pa. 222), referred to on page 536, was affirmed by the Supreme Court of the United States (194 U. S. 478). The case of *Mirande v. Texas, etc., R. Co.* (102 Fed. 246), referred to on page 185, was before the Supreme Court of the United States and reported 184 U. S. 173. Neither of these Supreme Court cases receives treatment in the volume; nor does the case of *Hunting Elevator Co. v. Bosworth*, 179 U. S. 415.

It is to be regretted that the author does not give his views upon the constitutionality, adequacy and force of the Railroad Rate Act of 1906. He has a right, however, to await the judicial interpretation of this statute.

The concluding article on "Express Companies and the New Rate Law" will appear in the November issue of FREIGHT.

the situation, uses a two-inch hawser, an iron hook as large as one's body and a quarter of beef as an invitation to the counsel. Commissioner Clements is equally zealous in securing the truth, and uses his own unique way of ascertaining the facts by anticipating either what the counsel expects to say or what he expected to keep from the knowledge of the Commission. The chairman is inclined to wait until the counsel has rounded out a head of his argument, and then begins by saying, "Let me understand you, Mr. Smith, the case is about this."

What will be the method of the new Commissioners in ascertaining facts and in satisfying themselves is as yet uncertain. At the first public session they seemed content to hear the statements of the carriers, and certainly permitted every statement to go unchallenged publicly.

Nature of the Hearing

The Interstate Commerce Commission in action must be an administrative, a judicial or a legislative body. It is certain that the meeting held on September 12 lacked the smack of judicial inquiry and investigation. There is an informality in the proceedings which pleases the layman and to which only a shrewd lawyer can find himself able to accommodate himself. There seems to be no regular order of procedure; nor, in the *ex parte* hearing, such as was held, are those who appear before the Commission sworn before making their statement. The hearing is just such an one as to its methods as would be made before a body of traffic officials, if one sought a request to change any rate or classification. Both bodies, after having heard the statements of the interested parties, will consult and advise later. In the exercise of its discretion—a discretion confided to the Commission by the law—people are inclined to think that this is an exercise of the legislative discretion; that Congress, under certain of the powers granted to it by the Constitution, has transferred the discretion which it, as an elective legislative assembly, could exercise to a body appointed by the Executive. The exercise of the discretion to say whether or not export rates upon cotton shall be published is clearly an administrative act. It would be an administrative act were it not written in the law, for the Commission could get this power under the general power to execute and enforce the law. If it saw fit to permit a portion of the statute to remain a dead letter, and obtained consent of the Executive, no one can find a means to compel obedience to the law.

When, however, under some of the sections of the law, it shall be alleged that a certain named carrier is violating a portion of it, and the carrier has denied the violation, and distinct issues have been framed, it is, beyond peradventure, then that the Commission will act as a judicial body. It will then be required to do what the Supreme Court has more than once said is a judicial act. It then ought to be bound by rules of

evidence. It must be judges both of the fact and of the law. It must take the place of the jury and of the court.

But it has other duties. It may, through the Attorney-General, apply for a writ of injunction or mandamus to compel carriers to obey the law. It can then act for and on behalf of the Government, and do those things which are ordinarily performed by the Attorney-General.

Attitude of the Commission

Much discussion is being had concerning whether or not the Commission will take an active part, of its own motion, in securing the enforcement of the law, or whether it will wait until complaints have been made by parties who assume that they have been injured. As an administrative body it is its duty to ferret out the supposed violation, either of its own motion, in accordance with legislative resolutions, or at the informal suggestion of an aggrieved person. As a judicial body, it must wait until there has been filed with it a formal complaint alleging a violation of the law. This question has been often discussed, and is of the utmost importance at the present time. In the past the Commission has been an overworked body; in the present, even with the additional membership, the work is more arduous than before.

The Commission is being importuned by shippers to enforce, execute and compel obedience to the law in all sorts of particulars. Hundreds, almost thousands of legal questions are being raised. The layman reads the language of the statute as best suits his purposes, and being unfamiliar with the rules of judicial interpretation, attempts to bring his particular case within the language of the law. The Commission is being asked to exercise its discretion in a broad minded way; it is being urged to exercise its discretion in matters concerning which it has no discretion; it is being urged to enforce parts of the law which can only be enforced through the courts. Hypothetical questions without number are being transmitted for solution.

The battle is not solely between the shippers or users of transportation facilities on one hand and the carriers upon the other. It is likewise between the carriers. They are not of one opinion concerning what the law means, and hold widely divergent views of how the Commission can exercise its discretion. One set of carriers say they want each and every line of the law enforced. The other set ask to be relieved from the operation of the law or some portion of it.

All in all, the Commission has a hard job, and it has something else to do except to sit upon the bench and look wise.

Every traffic manager should have a FREIGHT CLAIM INDEX AND RECORD. It saves time and money. Price \$5.

What Was Said in 1887 of the Rate Law

BY E. BURT ARTHUR

As far as one is able to judge, the prevailing public opinion concerning the effect of the Rate Law of 1906 is not far different from what it was concerning the original Interstate Commerce Act. That act was effective in April, 1887. No sooner had the Commission been organized than objections arose from all parts of the country. There were some few objections to the personnel of the Commission, the Pacific Coast complaining that it had no representative on the Commission; there were objections that the act was impossible of enforcement, that it ought to be repealed, that it would produce favoritism rather than abolish discriminations.

Long and Short Haul Clause

The most objectionable part of the statute, if one is to judge by the press comments of the times, was the long and short haul clause. Manifestly, the people read the fourth section as it was written, and not as it was subsequently interpreted. The provision regarding passes ranked next in the space given to the consideration of the subject. The "discriminations" seemed to have greater effect on the civil rights law than ever again came into public print; the experience of the colored parson in Georgia, who was ordered out of the car provided for the white passengers, caused the staid *Boston Journal* to express the opinion that the parson had a remedy, because "what the civil rights bill failed to do the interstate commerce law does plainly and explicitly"—in that it provided there should be no discrimination against any person.

History seems to be repeating itself, not generally and "under substantially similar circumstances and conditions," but literally under identical circumstances and conditions. Then, as now, applications were made *ex parte* for relief from the provisions of the law, for an interpretation of what the law means, for the exercise by the Commission of its discretion in matters in which the law gave it discretion as well as in matters in which the law gave it no discretion. Advice to the Commission was then just as free as now.

The press comments are interesting—interesting as they carry one back to the situation then existing, and interesting also to see how far wrong many people were.

The President of the New York Central in 1887 was Chauncey M. Depew. Soon after the law became effective he said: "When the evils that really exist have been rectified, as they will be in the first year of the existence of the Commission, then the railway problem will be taken out of politics, the railways will subside into business organizations, run on business principles and free from political influences, and that will be quite as important a reform as any that has occurred in the history of this country." Perhaps Mr. Depew

believes that his prophecy has come to pass; if so, no one else joins in that opinion.

Hypothetical Questions Not Decided

If one consider the recent *ex parte* requests for rulings and interpretations, the statement of the *Philadelphia Press* cannot fail to interest. It read: "The Interstate Railroad Commission has taken the only ground open to it in declining to decide theoretical questions. No court does, and the Commission is likely to find all its time taken for some time to come in passing on the one serious grievance raised by the law—the summary advance of long haul rates where a low tariff, lower than for intermediate distances, is necessary to secure the traffic."

That there was a chance to make the law bearable must be inferred from the following in the *Commercial Gazette* of Cincinnati: "The Commissioners, sure of their safe places anyhow, may eventually construe the law so as to render it nearly harmless, or even beneficial in certain directions; but the fact remains that Congress has blundered in interfering with hasty legislation to the extent it has with private interests so vast as to appear public from their very extent."

When one hears of the applications of some of the carriers for the making of rates and their change in less than thirty days, and perhaps the application is seconded by some large industry, he is much inclined to approve what was said of the law of 1887 by the *Chicago Mail*. After stating that it was a piece of hasty legislation, that periodical said: "But it is the law and it should be strictly enforced. If its passage was a mistake it should be repealed or amended. This, however, should be done by the law-making power, and not by the Commissioners. A strict enforcement of a bad law is the surest way to get rid of it."

If the *Springfield Republican* was right in its statement concerning public clamor in 1887, certain people can get consolation even at this date and under the amending statute. Suggesting that Congress should have acted more deliberately, it said: "But instead of doing this it patched up a hasty law and passed it in a hurry to silence the popular clamor. As a result, popular clamor is now all the other way." And this was within the first month in which the law became operative.

The Cincinnati *Enquirer* termed the Commissioners the "Moguls" of the Interstate Commerce Commission, and in the same breath undertook to tell how the pass provision was being consistently violated.

Ex Parte Applications

The *Philadelphia Inquirer* said the law was "one to be amended and not to be repealed." Explaining the position in regard to *ex parte* applications, what

it wrote then seems to be clearly applicable now: "It will be seen by the declaration of the Interstate Commerce Commission that questions arising under the new law will not be decided in advance. The Commission will hear petitions from persons who believe they have been or are being injured by violations or evasions of the act, but feigned issues will not be tried, and no officious advice will be given relative to the conduct of affairs by railway managers. This decision reduces and simplifies the work of the Commission, and shows all parties interested just what course should be pursued in reference to the new bill."

The New York *Sun* thought the law difficult of enforcement, and saw the immense labor thrown upon the Commission. It said: "If the operation of the laws of nature governing the movements of the planets and stars could be suddenly suspended, and the whole business of regulating the universe intrusted to a commission of astronomers, equipped with nautical alman-

acs, logarithms and tables of logarithms, the latter would find themselves in a plight not very much worse than that of the members of the Interstate Commerce Commission. It is a heavy load that these gentlemen have to carry, if they do their duty under the law." The *Sun* could not refrain from looking into the future, however, and added: "Fortunately for them and for everybody else, it will be a short haul." A witty, but untrue prophecy, as we now know.

So, to a remarkable degree, there is today being reproduced the same objections to the law itself, to its meaning, to its drastic provisions; the same applications for non-application of the act; the same requests for interpretation; and the same denials, the same misgivings of the value and the same "advice" to the Commission. The law has changed, but the new law seems to be as foreign to existing conditions as the initial law of 1887 was to commercial affairs at that time.

The Rate Bill—From a Shipper's Standpoint

BY ROBERT W. HIGBIE

THAT the new Rate Bill is a measure of the first importance is true; to say whether or not it will mark the ending of the old order of things and the beginning of a new, in the relations that are to exist between common carriers and the public at large may require a seer, and yet such are the present indications.

The salient provisions of the new law are: Private car lines, pipe lines and express companies are brought under the supervision of the Interstate Commerce Commission; the initial carrier is made responsible to the shipper for loss or damage to goods in transit, whether such loss or damage occurs on its lines or the connecting lines; the provisions making it imperative that through rates be made on all interstate shipments; that switching connections be made; that common carriers cease carrying commodities in which they are interested; the giving of power to the Interstate Commerce Commission to substitute maximum reasonable rates for those found to be unreasonable.

The Most Important Provision

All of these provisions and some others not above enumerated, are of the utmost importance, and will unquestionably give relief to shippers and communities, but the most important thing in the new situation produced by the passage of this bill is, that hereafter all common carriers will be in exactly the same position before the law as the smallest shipper; that a decision hereafter made or an order hereafter entered by the Interstate Commerce Commission is on a level with any decision by an inferior court; that is, the common carrier *must* be bound by such decision and obey such an order, or else take an appeal to the Circuit Court. In other words, insofar as a decision by a court is binding upon the interested par-

ties, just so far a decision of the Interstate Commerce Commission is made effective under the new Rate Bill.

The remarkable thing about such a condition is not that it is *now true*, but that it has not *always been true*. Why should one class have had any advantage of position over any other class? Why should one class have been able to do as it pleased and another class have been powerless to protect itself? There is no reason except the bare fact that such has been the condition of things under the "old order."

Remedy via Common Law

I am well aware that some eminent jurists and writers have said that the above conditions need not have existed, in fact, did not exist; that ample protection was afforded to all under the common law. What remedy does the common law offer? If a shipper has a grievance against a common carrier because he is discriminated against or because his rates are unreasonable or unjust, he can doubtless bring a suit against such common carrier and demand that the questions of fact be submitted to a jury. Let it be supposed that this has been done and that the jury has given a verdict and assessed the damages in favor of the shipper as against the common carrier. The case would be appealed again and again until years would be consumed before a final decision could be reached, and even of the final decision affirmed the verdict of the jury the shipper would not have gained anything more than relief for the one item upon which his case was brought (and at an expense, in most cases, many times greater than the amount of the verdict in his favor), while all the accumulated losses entailed in his daily shipments during the years the case was before the courts would still be the ship-

per's to bear and the only way open to him under the common law would be to traverse the same weary road again with the same disastrous result. Truly the remedy provided is worse than the disease.

Under the Act to Regulate Commerce, as passed in 1887, it is true a decision in a case by the Interstate Commerce Commission might be reached much more quickly than under the process provided by the common law, but unfortunately even then the common carrier need not, in fact did not, obey the findings of the Interstate Commerce Commission unless such findings were confirmed by a court of competent jurisdiction in a suit brought by the Interstate Commerce Commission itself, or unless it suited the pleasure of the carrier.

Value of the Commission

It may be stated as a fact that valuable and important as the work was, that was accomplished by the Interstate Commerce Commission prior to August 28, 1906, its value and importance was almost entirely such as would attach itself to a board of mediation or arbitration. In all cases that were actually heard by the Interstate Commerce Commission, and in which direct orders were finally entered, comparatively little benefit accrued to the complainants, because such orders were almost uniformly ignored by the carriers or else failed of confirmation by the courts. The great benefits that did accrue to the shippers, and these benefits were by no means inconsiderable, were in cases in which the Interstate Commerce Commission were able to bring the two parties together and get them voluntarily to adjust their differences.

Such, in brief, was the situation before the present law went into effect.

Conditions Now Reversed

Under the new law the proceedings in any given case are the same as under the old law before the Interstate Commerce Commission, until an order is entered. Should the order be against the carrier the procedure is then reversed, for heretofore, when the Interstate Commerce Commission made an order against a carrier, such an order was, to all intents and purposes, without any force or effect until affirmed by a court of competent jurisdiction in a suit brought by the Interstate Commerce Commission to enforce its order, and the burden of proof as to the lawfulness of such an order was on the Interstate Commerce Commission itself, but now no confirmation by a court is necessary except in cases of appeal, and then the burden of proof as to its unlawfulness is on the carrier, where it naturally, reasonably and fairly should always have been. It has taken years to bring about this reversal of conditions; men of the highest ability, with unlimited money and resources, have fought it step by step; members of Congress have opposed it or sought to postpone action; compromises have been suggested, but in spite of all these the change was effected because the right will always win in the long run.

Praise for the Senate

Just here I would like to pay my respects to the United States Senate. This body has had all sorts of fault found with it; its members have been ill-spoken of and criticised without limit, and yet, in this matter, it has risen to as high a level of statesmanship as was ever witnessed in this country.

It is possibly true that a majority of the influential Senators were either honestly opposed or indifferent to the Hepburn Bill as passed by the House of Representatives, but in spite of this, when convinced that the President and the House were right, that a bill was necessary, the members of the Senate gave their best efforts to shape and remodel the House bill, with a result that will always command the highest praise, because the highest praise is none too great.

Just what the effect of this new bill will be it is too soon to say. That the effect will be beneficial is not doubted save by a few. That none of the dire and dreadful things prophesied by the carriers have come to pass, we know. The one thing, however, that does stand out in bold relief is that never again will the common carriers of this country be *above* the law. The present law may even be declared unconstitutional in whole or in part, as some eminent lawyers declare it is, and thereby render further legislation necessary, but that the old order has passed never to return, is just as true as that the day of special classes with special privileges is past.

A Suggested Amendment

I would like to suggest one amendment to the new law which seems to be necessary.

If this new law contains any defect it is that one body of commissioners will not be able to meet the needs of the people. One body will either be so far removed from the shipper that a remedy will not be available, or else the Commission will be so overloaded with cases as to make it physically impossible for the members to hear them within a reasonable time. To meet this situation would it not be wise to learn something from the railroads themselves? For their convenience they have divided the United States into three grand divisions called classification territories, as follows:

1st—All that part of the United States and Canada north of the Potomac and east of the Mississippi rivers is known as the Official Classification Territory.

2d—All that part of the United States south of the Potomac and east of the Mississippi rivers is known as Southern Classification Territory.

3d—All that part of the United States west of the Mississippi River is known as Western Classification Territory.

Within each of these territories the railroads have their various organizations and committees. To these organizations and committees are referred all matters pertaining to each territory. In order to hasten a settlement of all matters of difference between shippers and carriers; to bring each matter before a proper board or court fully acquainted with the conditions;

to arrange the disposition of all cases so as to cause as little inconvenience to all parties concerned as possible, I would suggest an amendment whereby three inferior boards of Interstate Commerce Commissioners be created, one in each of the three classification territories above named, and that every complaint be first heard by the Interstate Commerce Commission for the territory in which the plaintiff resides, and that the appeal, if any, be made to the present Interstate Commerce Commission sitting at Washington. The advantages of such a plan are so obvious as to make any elaboration unnecessary. That some plan must needs be made either to relieve the present Interstate Commerce Commission or to bring a remedy

closer to the people, will be more and more evident as the provisions of the new law work themselves out.

Those who have worked so long and tirelessly for amendment to the Interstate Commerce Law have every reason to take heart. The Hepburn Bill is, perhaps, not perfect; it does not contain all that some thought it should contain, but taking a broad view of the whole situation we must say that we have secured all that any one could reasonably have expected.

As soon as the new law shall have had sufficient time in which to demonstrate its strong and weak points, the friends of this legislation will know what further amendments, if any, are needed, and be fully prepared to perfect the work so splendidly begun.

AMERICAN BANKERS' ASSOCIATION

The American Bankers' Association will hold its thirty-second annual convention in St. Louis, October 16, 17, 18 and 19. Secretary James R. Branch expects that the attendance will exceed 4,000 members.

Following is the order of the proceedings, which, however, according to the program, is subject to change by a vote of the executive council or by vote of the convention:

WEDNESDAY, OCTOBER 17.

Convention called to order at 10 o'clock a. m. by the president, John L. Hamilton; prayer by Right Rev. Archbishop John J. Glennon; address of welcome for the Mississippi Valley by Hon. David R. Francis, president Trans-Mississippi Congress; address of welcome for the State of Missouri by Hon. Joseph W. Folk, Governor; address of welcome for the city of St. Louis by Hon. Rollo Wells, Mayor; address of welcome by J. C. Van Blarcom, chairman Reception Committee, president National Bank of Commerce in St. Louis; reply to addresses of welcome and annual address by the president, John L. Hamilton; annual report of the secretary, James R. Branch; annual report of the treasurer, Ralph Van Vechten; report of the Auditing Committee; report of the Executive Council by the chairman, J. D. Powers; report of the Protective Committee by the secretary; report of the Committee on Uniform Laws by the chairman, E. D. Keys; report of Committee on Bureau of Education by the chairman, J. B. Finley; report of Bill of Lading Committee by the Chairman, Lewis E. Pierson; report of Clearing House Conference Committee by the chairman, Walker Hill; report of the Bank Legislative Committee by its chairman, Arthur Reynolds; report of Committee on Uniform Warehouse Receipts by the chairman, A. H. Curtis; report of Committee on Conference on Emigration by the chairman, W. L. Moyer; report of Committee on Legal Decisions by the chairman, W. J. Field; report of Committee on International Form of Money Order by the chairman, R. L. Crampton. Roll call of vice-presidents—The vice-presidents are requested to reply with five-minute speeches telling of the business conditions in their States and Territories.

Practical Banking Questions.—(Discussion limited to thirty minutes for each topic; open to all delegates under the five-minute rule; time to be extended by unanimous consent.)—"Pending Financial Legislation," Hon. Charles N. Fowler, chairman Committee on Banking and Currency, House of Representatives. "Our Currency as it Appears to a Canadian," John Knight, secretary Canadian Bankers' Association, Montreal, Canada.

THURSDAY, OCTOBER 18.

Convention called to order at 10 o'clock a. m. by the president, John L. Hamilton. Prayer by the Rev. Dr. Henry Stiles Bradley. Announcements.

Practical Banking Questions. (Discussion limited to thirty minutes for each topic; open to all delegates under the five-minute rule; time to be extended by unanimous consent.)—"Education for Business," Prof. Joseph French Johnson, dean New York University School of Commerce Accounts and Finance, New York City; "A Plea for the Cotton Fields," Charles J. Haden, Atlanta, Ga.; "Some Financial Aspects of the Late War," Mr. Yeijiro Ono, Ph. D., superintendent of agencies, the Bank of Japan.

FRIDAY, OCTOBER 19.

Convention called to order at 10 o'clock a. m. by the president, John L. Hamilton. Prayer by the Rev. Dr. W. C. Bitting.

Practical Banking Questions. (Discussion limited to thirty minutes for each topic; open to all delegates under the five-minute rule; time to be extended by unanimous consent.)—"A Woman's Qualification as a Bank Official," Mrs. V. F. Church, cashier Bank of Joplin, Joplin, Mo.

Continuation of discussion of practical banking questions. Unfinished business, Report of committee on nominations. Elections. Installation of officers elected.

Ohio Grain Dealers to Meet

The regular fall business meeting of the Ohio Grain Dealers' Association will be held at the Chittenden Hotel, Columbus, Ohio, Friday, October 12. All regular grain dealers are invited. Also representatives of trade journals and other interests connected with the trade at large.

Wm. J. Bryan on Communal Ownership

FREIGHT presents on this page the opinion of Hon. William Jennings Bryan on government ownership of railways and also on the land question in Russia. Whatever may be his revised view on the railway question, it will be seen that in the matter of land he apparently has observed that individual ownership is far preferable to communal holdings. His views on government railway ownership were taken from his speech in August at Madison Square Garden, and his observations on the Russian land question from his correspondence to a newspaper syndicate, dated Stockholm, June 22d, 1906:

Railroads

"Believing, however, that the operation of all the railroads by the Federal Government would result in a centralization which would all but obliterate State lines, I prefer to see only the trunk lines operated by the Federal Government, and the local lines by the several State Governments. Some have opposed this dual ownership as impracticable, but investigation in Europe has convinced me that it is entirely practicable.

"Nearly all the railroads of Germany are owned by the several States, the Empire not even owning the trunk lines, and yet the interstate traffic is in no wise obstructed. In traveling from Constantinople to Vienna, one passes through Turkey, Bulgaria, Servia, Hungary and a part of Austria without a change of cars, and yet each country owns and operates its own roads and different languages are spoken on the different divisions of the line. Sweden and Norway each owns its railroads, but they have no trouble about interstate traffic, although their political relations are somewhat strained.

"The ownership and operation of the local lines by the several State Governments is not only feasible, but it suits itself to the conditions existing in the various States. In those States, where the people are ripe for a change, the local lines can be purchased or new lines be built at once, while private ownership can continue in those States in which the people still prefer private ownership. Some States have been more careful than others to prevent the watering of stock, and in the acquiring of roads each State can act according to the situation which it has to meet.

"As to the rights of the governments, Federal and State, to own and operate railroads there can be no doubt. If we can deepen the water in the lakes and build connecting canals in order to cheapen railroad transportation during half of the year, we can build a railroad and cheapen rates the whole year; if we can spend several hundred millions on the Panama Canal to lower transcontinental rates, we can build a railroad from New York to San Francisco to lower both transcontinental and local rates. The United States mail is increasing so rapidly that we shall soon be able to pay the interest on the cost of trunk lines out of the money which we now pay to railroads for carrying through mails."

Land

"Just now the land question is paramount. About one-third of the entire amount of land in the empire is in the hands of the Czar, the Government and the nobility, and the peasants demand that it shall be turned over to them. At this time they are willing to have compensation made to the owners, but the more they think about it and the more vehement their demand becomes the less they are likely to consider compensation.

"Powerless to condemn land for roads, as it can be done in other countries, they have grown embittered year by year until some of them feel that patience has ceased to be a virtue. It is now intimated that the Government will offer a partial distribution of land as a compromise.

"The opponents of expropriation seek shelter behind the excuse that the peasants attack the principles of private ownership. While it is true that there are Socialists in the Duma who prefer communal holdings to private ownership, the object of the peasants is not to dispossess small holders, but simply to give the peasants access to the large estates.

"The situation resembles, in some respects, the situation in Ireland, except that in Russia the land is to be turned over to the communities. I made some inquiry regarding the question of joint ownership and learned from one of the best informed men in Russia that there is a growing sentiment in favor of individual ownership. Ownership in common does not give to each individual that stimulus to improve his land which is the important element in individual ownership.

"In riding through a country one can distinguish with considerable accuracy between the farms cultivated by their owners and those cultivated by tenants, because the tenants as a rule are unwilling to make permanent improvements. One Russian economist estimates the income from the owned lands of Russia at 30 per cent. above the income of the same area of communal lands.

"He attributes it to the ability of the land owners to supply themselves with proper tools and to furnish or borrow at low rates the money needed for cultivation; but it is possible that this difference may be in part due to the fact that ownership makes the incentive to labor greater and offers a richer reward to superior effort."

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALENDAR OF HEARINGS

Salt Lake City, Utah, September 24, 1906.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

Denver, Col., September 27-28, 1906.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

Chicago, Ill., October 1, 1906.—In the matter of allowances to elevators by the Union Pacific Railroad Company.

Washington, D. C., October 8, 1906.—In the matter of the construction, publication and filing of rate schedules.

COMPLAINTS FILED

City of Spokane, Wash., et al. v. Northern Pacific Railway Company et al.

Unjust discrimination in rates against Spokane and in favor of Pacific Coast points.

Birmingham Packing Company v. Texas & Pacific Railway Company et al.

Unjust and unreasonable rates from Ft. Worth, Tex., to Birmingham, Ala.

Edward B. Crossman & Co. v. Wells, Fargo & Co. Express

Failure of defendant to receive C. O. D. shipments from complainant.

E. P. Peck v. Missouri, Kansas & Texas Railway Company

Failure to furnish cars for shipment of grain.

Ponca City Milling Company v. Missouri, Kansas & Texas Railway Company

Unreasonable rates on grain from Ponca City, Okla., to points in Indian Territory, Kansas, Missouri and other States.

St. Louis Hay & Grain Company v. Louisville & Nashville Railroad Company et al.

Discrimination in rates on hay against East St. Louis and in favor of other markets.

Sioux City & Rock Springs Coal Mining Company v. Union Pacific Railroad Company

Refusal to furnish side track for complainant.

American National Live Stock Association v. Texas & Pacific Railroad Company et al.

Refusal of defendants to establish through routes and joint rates between Texas & Pacific Railway points and Chicago and Missouri River points.

J. J. Waxelbaum & Co. v. Atlantic Coast Line Railroad Company et al.

Unjust and unreasonable rates on peaches from Macon and Atlanta, Ga., to Washington, Baltimore, Philadelphia and New York.

Merchants' Traffic Association v. New York, New Haven & Hartford Railroad Company et al.

Unjust and unreasonable rates on cotton piece goods from Atlantic Coast points to Denver and Colorado common points.

Johnston-Larimer Dry Goods Company v. Atchison, Topeka & Santa Fe Railway Company et al.

Unjust and unreasonable rates on cotton fabrics from points in Texas to Wichita, Kan.

Johnston-Larimer Dry Goods Company v. New York & Texas Steamship Company et al.

Unjust and unreasonable rates on cotton fabrics from New York to Wichita, Kan.

Johnston-Larimer Dry Goods Company v. Wabash Railroad Company et al.

Unjust and unreasonable rates on cotton fabrics from St. Louis, Mo., to Wichita, Kan.

Frederick Brick Works v. Northern Central Railroad Company et al.

Unreasonable rates on brick from Frederick, Md., to Elberon, N. J.

J. E. Walker v. Baltimore & Ohio Railroad Company et al.

Refusal of defendants to receive packages for delivery to those known to patronize certain trolley road.

Stowe-Fuller Company v. Pennsylvania Company et al.

Unreasonable rates on common fire brick from Strassburg and Empire, Ohio, to points in Pennsylvania and other States.

HEARINGS HELD

August 28, 1906, Washington, D. C.—Conference with representatives of trunk lines, New England lines, Central Traffic Association lines, and the Illinois Manufacturers' Association and American Manufacturers' Association in regard to compliance with requirements of the amended act to regulate commerce.

August 29, 1906, Washington, D. C.—Conference with representatives of the International Harvester Company in regard to filing and publication of schedules as required by amended act to regulate commerce.

August 29, 1906, Washington, D. C.—Conference with representatives of the express companies of

the United States in regard to filing and publication of tariffs as required by amended act to regulate commerce.

September 12, 13, 14, 1906, Washington, D. C.—In the matter of the petitions of various cotton carrying roads for authority to change export rates on cotton upon less than thirty days' notice.

September 14, 1906, Washington, D. C.—Conference with representatives of certain coastwise water lines.

September 17-18, 1906, Chicago, Ill.—In the matter of allowances to elevators by the Union Pacific Railroad Company.

September 19, 1906, Chicago, Ill.—In the matter of allowing changes in export and import rates on less than thirty days' notice to the Commission.

September 19, 1906, Chicago, Ill.—Pacific Coast Lumber Manufacturers' Association et al. v. Atchison, Topeka & Santa Fé Railway Company et al.

September 19-20, 1906, Omaha, Neb.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

Concession on Export Cotton Rates

In an order, dated September 15, 1906, the Commission has granted to carriers in Southern Classification territory certain concessions from the requirement of the amended sixth section of the act to regulate commerce prohibiting changes in rates on less than thirty days' notice to the public and to the Commission. The order reads as follows:

The Commission having under consideration the petition of the Southern Railway Company and other carriers operating in territory east of the Mississippi River and south of the Ohio and Potomac rivers for permission to equalize export rates on cotton, cotton seed and its products, and lumber, thereby making changes in their export rates on those commodities without the thirty days' notice required by law, and having heard representatives of the carriers and numerous shippers; and the Commission being of the opinion that carriers may legally issue through bills of lading from the interior point of shipment to a foreign destination which specify the inland rate to the port of export and the ocean rate from the port of export, even though no joint through rate is published:

It is ordered:

1. That no published rates on cotton shall be advanced except upon thirty days' notice, as required by law.
2. That from and after this date and until March 1, 1907, carriers may reduce their published export rates on cotton to the various ports of export upon three days' notice.
3. That until November 1, 1906, carriers may continue to equalize export cotton rates through the various ports by applying the lowest combination through all the ports, thereby making said rates without publication and filing as required by law: *Provided*, That they post in two conspicuous places in the stations where cotton is received for shipment notice of the rates so made so soon as they are made and mail copies

of the same to the Commission, said notices to specify the rate and the time during which the rate will continue in effect.

4. That as to cotton seed and its products and lumber the petition is denied.

Special Excursion Rates, Changes in Rates, Payment for Transportation, Etc.

Owing to numerous inquiries from railroad officials and from the public, and owing to the general concern shown in regard to certain provisions of the amended act to regulate commerce, the Commission, under date of September 15, issued and transmitted to all carriers subject to the act a circular entitled Tariff Circular No. 2-A. The circular in question is self-explanatory, and reads as follows:

The Interstate Commerce Commission, in answer to numerous inquiries from railroad officials and other interested persons, and for the purpose of giving administrative construction to certain provisions of the amended act to regulate commerce which became effective on August 28, 1906, announces the following rulings:

Payment for Transportation.—Nothing but money can be lawfully received or accepted in payment for transportation subject to the act, whether of passengers or property, or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or different compensation than the established rates in effect at the time precludes the acceptance of services, property, or other payment in lieu of the amount of money specified in the published schedules.

Notice of Changes in Rates.—Where two or more connecting carriers establish a joint rate which is less or greater than the sum of their local rates, such joint rate is a change of rates and requires a notice of thirty days. In such case the joint rate when duly established and in force becomes the only lawful rate for through transportation.

New Roads.—On new lines of road, including branches and extensions of existing roads, individual rates may be established in the first instance, and also joint rates to and from points on such new line, without notice, on posting a tariff of such rates and filing the same with the Commission.

Round-Trip Excursion Rates.—It is the opinion of the Commission that the provisions of the amended sixth section in respect of the publishing, filing, and posting of tariffs apply to the mileage, excursion, and commutation rates authorized by the twenty-second section. Such a rate when first established or offered is held to be a change of rates which requires a notice of thirty days. No reason appears why this notice should not be given in the case of mileage rates, commutation rates, round-trip rates, or other reduced rates which, like ordinary passenger rates, are established for an indefinite period and appear to be a matter of permanent policy. Strictly excursion rates, however, covering a named and limited period, are of a different character in this regard, and may properly be established on much shorter notice.

To avoid the necessity for special application in cases of this kind, the Commission has made a general order fixing the following named time of notice of round trip excursion rates, and carriers may govern themselves accordingly:

Rates for an excursion limited to a designated period of not more than three days may be established, without further notice, upon posting a tariff one day in advance in two public and conspicuous places in the waiting room of each station where tickets for such excursions are sold and mailing a copy thereof to the Commission.

Rates for an excursion limited to a designated period of more than three days and not more than thirty days may be established upon a notice of three days in place of the thirty days' notice otherwise required by the amended sixth section.

Rates for an excursion limited to a designated period exceeding thirty days will require the statutory notice unless shorter time is allowed in special cases by the Commission.

Construction and Filing of Tariffs

Under date of September 15 the Interstate Commerce Commission sent to all carriers subject to the act to regulate commerce a circular letter in regard to the filing, publishing and construction of tariffs. This circular merely suggests matters which will be the subject of consideration by the Commission at the hearing in this matter, which it has set for October 8 at its offices in Washington, D. C. This letter is self-explanatory, and reads as follows:

The Commission has in contemplation the making of an order with respect to the filing of tariffs, which will embrace the following requirements, among others:

1. Joint tariffs shall in all cases be filed by the initial line, but an initial carrier may authorize a connecting line to file its tariffs, *provided*, that all the joint tariffs of such initial line are filed by the same connecting carrier. In this case the connecting carrier shall be treated as the initial line.

2. The schedules of each initial line shall be printed as an independent document and not together with the schedules of any other initial line.

3. Participating lines may file with the Commission a general authority authorizing the initial line to file on their behalf all tariffs or all joint tariffs of a specified kind, and in such case no other concurrence in the tariffs covered thereby will be required. Where such general authority is not on file concurrences must accompany the tariff itself when presented by the initial line for filing, and such tariff will not be accepted and filed until all such concurrences have been received. The Commission will accept as evidence of concurrence a telegram from the proper officer of the concurring line to the proper officer of the filing line, stating the concurrence of the participating line in the tariff. Such concurrence should give the I. C. C. number of the tariff concurred in.

4. Class rates shall be filed in a tariff by themselves, and commodity rates in one or more tariffs, as the carriers may elect.

5. Each carrier shall file an index showing all commodity rates in effect which have been filed by it, specifying the I. C. C. number of the tariff in which such rate is found. Such index shall be by commodities and shall be made in such detail that each commodity can be easily located. This index shall be reprinted and filed with the Commission every three months, beginning January 1, 1907, provided changes have been made in the meantime; or carriers may file an index consisting of detachable leaves and may reprint the necessary leaf whenever change is made.

6. Not over five supplements shall be promulgated to any tariff, and not over ten to any classification; to show changes beyond this number the entire tariff or classification shall be reprinted. Each supplement, whether to a classification or a tariff, shall indicate all changes made by that supplement and previous supplements from the original tariff.

7. In the compilation of tariffs a uniform order shall be observed so that a given subject will always be found in a given portion of the tariff. Any fact stated in any other portion of the tariff than that prescribed will be regarded as not mentioned at all.

8. Terminal charges which must be paid by all shippers at destination, and which are, therefore, really a part of the cost of transportation, must be specified in the tariff of the initial line. Terminal charges which depend upon a contingency, like demurrage, storage, switching, etc., shall be filed by the delivering line and posted in the delivering station.

When any switching or terminal charge, either at the point of origin or the point of delivery, is absorbed, or when any service is rendered and the total cost to the shipper from the place where the property is first received to the place where it is finally delivered, is thereby affected, such absorption or such service shall be stated upon the tariff.

Before reaching any final conclusion touching the above propositions, the Commission would be glad to receive in writing suggestions from all interested parties. *It has also appointed a general session at its office in Washington for 10 o'clock in the forenoon of October 8, 1906, at which all parties desiring will be heard.* It is suggested that the carriers be represented at that time by a committee or committees reflecting the views of different carriers in different parts of the country. Perhaps each section to which each of the three classifications applies should send a committee of from three to five persons. While the Commission is not prepared at this time to suggest any uniform method of stating the rates in the body of the tariff, this also will be the subject of discussion.

After sufficient time has been allowed carriers for the revision of their tariffs no schedule will be filed by the Commission which is not constructed in conformity with the requirements of the statute and the rules prescribed by the Commission and which does not so state the rates contained that they can be understood by a person of ordinary intelligence.

The Peavey Elevator Case

Upon petition of the Chicago Great Western Railway Company and the Atchison, Topeka & Santa Fé Railway Company, the Commission has reopened the investigation, upon which a report was entered in June, 1904, entitled "In the Matter of Allowances to Elevators by the Union Pacific Railroad Company," relating to certain allowances made to Peavey & Company by the Union Pacific Railroad Company for the transfer of grain at Council Bluffs and Kansas City, and a hearing was had at Chicago on September 17 and 18.

From the original report of the Commission in this matter it appears that the Union Pacific Railroad Company entered into contracts with Peavey & Company under which the latter erected grain elevators at Council Bluffs and Kansas City for the transfer of grain at those terminals of the Union Pacific, and for this service the railroad company agreed to pay the elevator company 1½ cents per 100 pounds. Peavey & Company are large buyers and shippers of grain in the Northern and Western grain producing States, and control a large number of country elevators. The real complainants in this proceeding were carriers competing with the Union Pacific, who claimed that if this arrangement were not declared illegal they would be compelled to make similar allowances at transfer points on their own lines. The Commission held that the allowance to Peavey & Company was not illegal. At the hearings in Chicago it was attempted by the competing carriers to show that this allowance to Peavey & Company is in the nature of a rebate.

One of the first witnesses called was F. T. Heffelfinger, of Minneapolis, a partner in the Peavey Company. While admitting that most of the grain handled is their own, and would have to go through

their own warehouses somewhere, Mr. Heffelfinger insisted that the company performed a real service to the road at that point by relieving its cars of grain and releasing them for more hauls. Counsel for the other side hinted at enormous profits growing out of this practice until Heffelfinger offered then and there to sell the elevators at cost.

"Why don't your roads buy them," he demanded. "There is no money in them. I'd much rather have a terminal house here in Chicago and avoid all this notoriety and public censure. Perhaps we do make a profit out of it. I don't know whether we do or not, but I'll bet the Commissioners would be astonished to see how small it is."

Then the lawyers tried for an hour to get him to state the "astonishingly small" amount, but this the Commissioners decided he need not do.

"How much grain do you handle for the Union Pacific yearly under this rate?" inquired Attorney Severance, of the Chicago Great Western.

"About 7,500,000 bushels a year," was the answer, "with about 2,000,000 for the other concerns."

"Have any of the Union Pacific Railroad officials any stock in your companies?" was the next query.

"Not one, so far as I know," was the answer. "I know that none of my partners are interested in railroads."

A part of the hearing was taken up by Attorney J. N. Baldwin, of Omaha, counsel for the Union Pacific, in a personal attack upon President A. B. Stickney, of the Chicago Great Western, for reviving the fight.

"I want to say that this complaint is almost word for word an abstract of speeches the distinguished Mr. Stickney made before the Omaha Corn Exchange and the Commercial Club, copies being distributed gratis to a grateful public," he said. "The only difference is that the speeches were full of flowery language and were longer."

He hinted that the Union Pacific, if too hard pressed, might turn upon Mr. Stickney.

"We may have something to say here concerning that champion of public weal," he continued. "To quote Shakespeare, 'Forsooth, the lady doth protest too much, methinks.'"

Mr. Baldwin declared that the new interstate commerce act, if held valid, would work a revolution in railroad methods throughout the country. The complainants declare that the "rebate" given the Peavey Company often amounts to \$400,000 a year, and gives the latter a commanding position throughout the West. It is asserted that the company is able to pay $\frac{1}{4}$ cent more for grain than its competitors for delivery along the Union Pacific lines, and that the same difference continues into the Board of Trade.

Another witness at this hearing was A. B. Jacquith, a grain merchant of Omaha, and until three years ago manager of the Peavey interests there. Mr. Jacquith declared that in his opinion the elevator al-

lowances is in reality a rebate to the grain company and enables it to stifle competition. He testified that in his official capacity as manager of the Peavey Company he assisted in making the contract with the Union Pacific Company, and although he would not testify that he considered it a rebate when he made the contract, he thought that his company was getting a good deal.

"It is a pretty hard job to buck the advantage given the Peavey Company by this elevator allowance," said Mr. Jacquith. "I have learned this by experience. When the Peavey Company is given 1 $\frac{1}{4}$ cents per hundred pounds for elevator allowance on grain that is purchased in competition with me and I am not allowed that concession, it is easy to see that I am handicapped."

The question of the billing of shipments by the Peavey Company was brought up earlier in the hearing, when E. P. Peck, manager for the Peavey Company at Omaha, was on the stand. Mr. Peck said that he bills all his grain to St. Louis, care of the Peavey Elevator Company, Council Bluffs, Iowa, and that when it is put in the elevator he does, sending it wherever he wishes on the proportion of the through rate. In doing this he gets the elevation charge, but maintains that such a form of billing is not necessary to enable him to get the allowance.

The Commission set this matter for further hearing in Chicago on October 1. At this Chicago hearing the Commission also heard evidence in the case of the Pacific Coast Lumber Dealers' Association and others against the Atchison, Topeka & Santa Fé Railway Company and other Western lines, involving the legality of the requirement that lumber shippers furnish and pay freight on stakes, braces and racks for the gondola and flat cars used in the transportation of lumber. The lumber case was continued by agreement, the representatives of the Western roads that have not already promulgated such a tariff agreeing to allow 500 pounds tare on each carload of lumber to offset the weight of temporary stakes, braces and racks, pending the outcome of tests of permanent stakes, which the complainant claims should be made a regular part of the equipment of cars used in the transportation of lumber.

Changes in Export and Import Rates

At the Chicago hearing of September 17-18 the Commission also listened to arguments relating to the matter of making changes in import and export rates upon less than the thirty days' notice required by law. Four traffic officials submitted oral arguments for and against a strict interpretation of the thirty day notification clause, so far as it affects foreign shipments. Decision was reserved pending further hearing at Washington and the examination of written arguments which will be submitted by the interested parties before October 1.

Captain George J. Grammer, vice-president of the New York Central lines, in charge of traffic, who opened the argument on import and export rates, submitted credentials authorizing him to speak for the lake lines and roads east of the Mississippi River and lake ports. Captain Grammer favored a strict interpretation of the law and was supported by J. E. Gorman, Freight Traffic Manager of the Atchison, Topeka & Santa Fé Railway Company. W. M. Rhett, General Freight Agent of the Illinois Central, and E. E. Smythe, General Freight Agent of the Kansas City Southern, contended for a liberal interpretation allowing changes in export and import rates on five days' notice.

"One of the most discriminative, as well as destructive, methods of making rates that has been practiced in the past," said Captain Grammer, "has been by using the subterfuge of export and import rates. The method of making export rates on grain, provisions and other commodities from the West via central freight, trunk and New England lines, has been this: We take the ports from Montreal to Newport News inclusive and agree on a differential inland rate that shall apply via each port, which inland rate is maintained regardless of foreign destinations or point of origin, and such methods have thus far proved fair to all carriers.

"I seriously think the practice of making a lower rate on export property than is made on domestic property should be prohibited, thereby removing this source of manipulation. I am unqualifiedly in favor of the Commission ruling that the domestic rates from all ports of entry should apply on import shipments, regardless of inland destination. It is hoped the Commission will insist on the thirty days' rule of changing both export and import rates, and domestic rates as well."

Mr. Gorman, for the Santa Fé, contended that there was no necessity for changes in import and export rates through Southern ports on shorter notice than on those quoted by way of the seaboard. Mr. Rhett opposed a strict interpretation of the thirty day notification clause, for the reason, as he stated, that the distance by way of the gulf ports is longer, making the elapsed time of transit greater, and that there are added insurance costs and interest rates.

"It is impossible," he said, "for the Illinois Central to continue in the export business if we are compelled, as Captain Grammer has suggested, to base our rates on the domestic rate without the privilege of changing our tariffs on less than thirty days' notice. The Illinois Central has been working up the export business on certain classes of freight for a number of years, and I know we have expended more time and money than any other gulf line in this direction."

Mr. Rhett said the Canadian lines operating outside the jurisdiction of the Interstate Commerce Commission would be a menace to the interests of the Illinois Central unless the latter road were permitted to change its export and import tariffs to conform to

the scale of rates maintained by the Canadian roads on less than thirty days' notice. In answer to Chairman Knapp's question he said he considered five days' notice sufficient for a change in rate, and even that, he thought, would work a hardship on the gulf lines.

The Commission has set this matter of publication of export and import rates down for further hearing at its office in Washington on October 10.

Exceptions to the Requirement of Thirty Days' Notice of Rate Changes

The amended sixth section of the act to regulate commerce provides that no changes shall be made in the rates, fares or charges which have been published by any common carrier in compliance with the law, except after thirty days' notice to the Commission and to the public, but the Commission is authorized in its discretion, and for good cause shown, to allow changes upon less than the thirty days' notice specified, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions. Already the Commission has found occasion to exercise its discretion in both of the methods indicated by the statute.

A general order, set forth at length in another part of this issue, permitting the publishing and filing of export rates on cotton by carriers in Southern Classification territory upon less than thirty days' notice, has been issued by the Commission, and the question of allowing changes in all export and import rates on less than thirty days' notice was considered by the Commission at a recent hearing in Chicago, and has been set down for further hearing in Washington on October 10. The Commission has also made a ruling, published in its Tariff Circular No. 2-A, permitting special excursion rates for a limited period to be established upon less than thirty days' notice.

As to matters involving the change of individual rates on short notice, large numbers of applications, mostly by telegram, have been received by the Commission each day since the law took effect. At first these applications were for the purpose of allowing carriers to meet rates which had been put in effect by competing lines shortly before the law took effect. Other applications have sought to establish additional through lines by adding terminal carriers not already specified in the existing joint tariffs, and some have related to rates on material for a new industry or one about to be reopened. A large number of applications have also been filed by roads in Official Classification territory for permission to put in reduced passenger rates on five days' notice. The question of granting or denying these applications depends in each case upon the special circumstances or conditions which may be shown to justify the shorter notice desired.

Abstract of Statistics

The Commission has issued the following abstract of statistics of railways in the United States for the year ending June 30, 1905:

INTERSTATE COMMERCE COMMISSION.

WASHINGTON, D. C., September 21, 1906.

ABSTRACT OF STATISTICS OF RAILWAYS IN THE UNITED STATES FOR THE YEAR ENDING JUNE 30, 1905.

The figures in this abstract are based on summaries included in the Eighteenth Annual Statistical Report of the Interstate Commerce Commission, prepared by its statistician, as the complete report for the year ending June 30, 1905. This report is similar to preceding reports in the series. It contains tables showing details of mileage, capitalization, earnings, and expenses by roads, and besides includes many summaries of statistics for the roads as a whole.

MILEAGE AND CAPITALIZATION OF ROADS.

On June 30, 1905, the report shows that the total single track railway mileage in the United States was 218,101.04 miles, or 4,196.70 miles more than at the end of the previous year. An increase in mileage exceeding 100 miles appears for Alabama, Arkansas, California, Georgia, Illinois, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Pennsylvania, Texas, West Virginia, Wisconsin, and Indian Territory.

The operated mileage for which substantially complete returns were rendered to the Commission was 216,973.61 miles, including 7,568.95 miles of line used under trackage rights. The aggregate length of railway mileage, including tracks of all kinds, was 306,796.74 miles. This mileage was thus classified: Single track, 216,973.61 miles, as just mentioned; second track, 17,056.30 miles; third track, 1,609.63 miles; fourth track, 1,215.53 miles, and yard track and sidings, 69,941.67 miles. These figures indicate that there was an increase of 9,723.40 miles in the aggregate length of all tracks, of which 3,449.21 miles, or 35.48 per cent., represented the extension of yard track and sidings.

The number of railway corporations for which mileage is included in the report was 2,167. Of this number, 1,169 were classed as operating roads, including some miscellaneous industrial roads for which no comprehensive returns were received. During the year railway companies owning 3,802.02 miles of line were reorganized, merged, or consolidated. The corresponding figure for the year 1904 was 5,600.18 miles.

The report shows that for the year ending June 30, 1905, the mileage of roads operated by receivers was 795.82 miles, or a decrease of 527.46 miles as compared with 1904. The number of roads in the hands of receivers was 26.

EQUIPMENT.

On June 30, 1905, there were in the service of the carriers 48,357 locomotives, the increase being 1,614. These locomotives, excepting 947, were classified as: Passenger, 11,618; freight, 27,869, and switching, 7,923.

The total number of cars of all classes was 1,842,871, or 44,310 more than for the year 1904. This rolling stock was thus assigned: Passenger service, 40,713 cars; freight service, 1,731,409 cars, and company's service, 70,749 cars. These figures do not include cars owned by private commercial firms or corporations.

The average number of locomotives per 1,000 miles of line was 223, and the average number of cars per 1,000 miles of line was 8,494. The number of passenger-miles per passenger locomotive was 2,048,558, showing an increase of 100,174 miles, as compared with the previous year. The number of ton-miles per freight locomotive was 6,690,700, showing an increase of 233,854 miles.

The number of locomotives and cars in the service of the railways aggregated 1,891,228, of which 1,641,395 were fitted with train brakes, or an increase for the year of 86,623, and 1,871,590 were fitted with automatic couplers, or an increase of 48,560. Nearly all the locomotives and cars in the passenger service had train brakes, and all but 82 locomotives in the same service were fitted with automatic couplers. Only 1.63 per cent. of cars in the passenger service were without auto-

matic couplers. Substantially all the freight locomotives had train brakes and automatic couplers. Of 1,731,409 cars in the freight service on June 30, 1905, the number fitted with train brakes was 1,515,354, and with automatic couplers 1,715,854.

The statistical report contains a number of interesting summaries, showing the general type and tractive power of locomotives and the capacity of freight cars by classes.

EMPLOYEES.

The reported number of persons on the payrolls of the railways in the United States on June 30, 1905, was 1,382,196, which is equivalent to an average of 637 employees per 100 miles of line. These figures show an increase in the number of employees as compared with the year 1904 of 86,075, or 26 per 100 miles of line. Of the employees 54,817 were engineers, 57,892 firemen, 41,061 conductors, and 111,405 were other trainmen. There were 45,532 switch tenders, crossing tenders, and watchmen. The total number of railway employees, disregarding a small number not assigned, were apportioned among the four general divisions of railway employment as follows: For general administration, 54,141; for maintenance of way and structures, 448,370; for maintenance of equipment, 281,000, and for conducting transportation, 595,456.

The report includes summaries showing the average daily compensation of 18 classes of employees for a series of years, and also the aggregate amount of compensation stated for the several classes. The total amount of wages and salaries reported as paid to employees during the year ending June 30, 1905, was \$839,944,680.

CAPITALIZATION OF RAILWAY PROPERTY.

On June 30, 1905, the par value of the amount of railway capital outstanding was \$13,805,258,121, which is equivalent to a capitalization of \$65.926 per mile for the railways in the United States. Of this capital there existed as stock \$6,554,557,051, of which \$5,180,933,907 was common, and \$1,373,623,144 preferred; the remaining part, \$7,250,701,070, represented funded debt, consisting of mortgage bonds, \$6,024,449,023; miscellaneous obligations, \$786,241,442; income bonds, \$253,707,699; and equipment trust obligations, \$186,302,906.

Of the total capital stock outstanding \$2,435,470,337, or 37.16 per cent., paid no dividends. The amount of dividends declared during the year was \$237,964,482, being equivalent to 5.78 per cent. on dividend-paying stock. For the year ending June 30, 1904, the amount of dividends declared was \$221,941,049. Of the total amount of stock outstanding \$6,554,557,051, 9.72 per cent. paid from 1 to 4 per cent.; 14.77 per cent. from 4 to 5 per cent.; 10.74 per cent. from 5 to 6 per cent.; 8.79 per cent. from 6 to 7 per cent., and 11.68 per cent. from 7 to 8 per cent. The total amount of funded debt (omitting equipment trust obligations) that paid no interest was \$449,100,396, or 6.36 per cent. Of mortgaged bonds, \$326,863,401, or 5.43 per cent.; of miscellaneous obligations, \$54,214,525, or 6.89 per cent., and of income bonds, \$68,022,470, or 26.81 per cent., paid no interest.

Of the total amount of railway stock outstanding \$2,070,052,108 were reported as owned by railway corporations, and of railway bonds \$568,100,021 were so reported.

PUBLIC SERVICE OF RAILWAYS.

The number of passengers reported as carried by the railways in the year ending June 30, 1905, was 738,834,667, this item being 23,414,985 more than for the year ending June 30, 1904. The passenger-mileage, or the number of passengers carried 1 mile, was 23,800,149,436, the increase being 1,876,935,900 passenger-miles.

The number of tons of freight reported as carried (including freight received from connections) was 1,427,731,905, which exceeds the tonnage of the year 1904 by 117,832,740 tons. The ton-mileage, or the number of tons carried 1 mile, was 186,463,109,510, the increase being 11,941,019,933 ton-miles. The number of tons carried 1 mile per mile of line was 861,396, indicating an increase in the density of freight traffic of 31,920 ton-miles per mile of line.

The average revenue per passenger per mile for the year ending June 30, 1905, was 1.962 cents. For the preceding year the average was 2.006 cents. The average revenue per ton per mile was 0.766 cent; the like average for the year 1904 was 0.780 cent. The earnings per train mile show an increase both for passenger and for freight trains. The figures show a slight increase in the average cost of running a train 1 mile. The ratio of operating expenses to earnings for the year 1905 was 66.78 per cent. For 1904 this ratio was 67.79 per cent.

EARNINGS AND EXPENSES.

The gross earnings of the railways in the United States from the operation of 216,973.61 miles of line were, for the year ending June 30, 1905, \$2,082,482,406, being \$107,308,315 greater than for the year 1904, and for the first time exceeding the two billion mark. Their operating expenses were \$1,390,602,152, or \$51,705,899 more than in 1904. The following figures present a statement of gross earnings in detail and show the increase of the several items over those of the previous year: Passenger revenue, \$472,694,732—increase, \$28,367,741; mail, \$45,426,125—increase, \$926,393; express, \$45,149,155—increase, \$3,273,519; other earnings from passenger service, \$11,040,142—increase, \$125,396; freight revenue, \$1,450,772,838—increase, \$71,770,145; other earnings from freight service, \$5,080,266—increase, \$511,984; other earnings from operation, \$52,319,148—increase, \$2,333,137. Gross earnings from operation per mile of line averaged \$9.598, the corresponding average for the year 1904 being \$9.22 less.

The operating expenses assigned to the four general classes were: For maintenance of way and structures, \$275,046,036; maintenance of equipment, \$288,441,273; conducting transportation, \$771,228,666; general expenses, \$55,319,805; undistributed, \$566,372. Operating expenses averaged \$6.409 per mile of line, this average showing an increase of \$101 per mile in comparison with the year 1904.

The income from operation or the net earnings of the railways amounted to \$691,880,254. This amount exceeds the corresponding one for the previous year by \$55,602,416. The net earnings per mile of line for 1905 averaged \$3.189; for 1904, \$2.998, and for 1903, \$3.133. The amount of income attributable to other sources than operation was \$231,898,553. There are included in this amount the following items: Income from lease of road, \$114,473,139; dividends on stocks owned, \$56,842,694; interest on bonds owned, \$18,786,644, and miscellaneous income, \$41,796,076. The total income of the railways (\$923,778,807)—that is, the net earnings and income from lease, investments, and miscellaneous sources—is the amount from which fixed and other charges against income are taken to ascertain the sum available for dividends. Such deductions aggregated \$596,688,420, thus leaving \$327,090,387 as the net income for the year ending June 30, 1905, available for dividends or surplus.

The amount of dividends declared during the year under review (including \$82,415 representing other earnings to stockholders) was \$238,046,897, leaving as the surplus from the operations of the year ending June 30, 1905, \$89,043,490. The surplus from operations as shown for the preceding year was \$56,729,331. The amount of deductions from income as stated above, \$596,688,420, comprises these items: Salaries and maintenance of organization, \$612,518; interest accrued on funded debt, \$310,631,802; interest on current liabilities, \$11,451,400; rents paid for lease of road, \$116,380,644; taxes, \$63,474,679; permanent improvements charged to income account, \$37,720,624; other deductions, \$56,416,753.

It should be understood that the preceding figures for the income and the expenditures of railway companies are compiled from the annual reports of leased roads as well as of operating roads, and thus, necessarily, include duplications in certain items of income and also of expenditure on account of the fact that, in general, the income of a leased road is the rent which it receives from the company by which it is operated. There is included in the statistical report, however,

a summary which presents the income account for all the railways considered as a single system, from which intercorporate payments are substantially eliminated.

The complete report includes a summary showing the total taxes and assessments of the railways by States and Territories and also an analysis showing the basis of assessment.

RAILWAY ACCIDENTS.

In their annual reports to the Interstate Commerce Commission, carriers are expected to include all casualties to passengers, employees, trespassers, and other persons. The following figures therefore are not comparable with the returns shown in the Commission's Accident Bulletins, which are based on monthly reports, and mainly relate to casualties to passengers and to employees while on duty on or about trains:

The total number of casualties to persons on the railways for the year ending June 30, 1905, was 95,711, of which 9,703 represented the number of persons killed and 86,008 the number injured. Casualties occurred among three general classes of railway employees, as follows: Trainmen, 1,990 killed and 29,853 injured; switch tenders, crossing tenders, and watchmen, 136 killed, 883 injured; other employees, 1,235 killed, 36,097 injured. The casualties to employees coupling and uncoupling cars were: Employees killed, 230; injured, 3,543. The casualties connected with coupling and uncoupling cars are assigned as follows: Trainmen killed, 217; injured, 3,316; switch tenders, crossing tenders, and watchmen killed, 6; injured, 128; other employees killed, 7; injured, 99.

The casualties due to falling from trains, locomotives, or cars in motion were: Trainmen killed, 407; injured, 4,645; switch tenders, crossing tenders, and watchmen killed, 12; injured, 126; other employees killed, 60; injured, 559. The casualties due to jumping on or off trains, locomotives, or cars in motion were: Trainmen killed, 119; injured, 3,798; switch tenders, crossing tenders, and watchmen killed, 4; injured, 111; other employees killed, 49; injured, 628. The casualties to the same three classes of employees in consequence of collisions and derailments were: Trainmen killed, 579; injured, 4,736; switch tenders, crossing tenders, and watchmen killed, 8; injured, 37; other employees killed, 85; injured, 750.

The number of passengers killed in the course of the year 1905 was 537, and the number injured 10,457. In the previous year 441 passengers were killed and 9,111 injured. There were 341 passengers killed and 6,053 injured because of collisions and derailments. The total number of persons other than employees and passengers killed was 5,805; injured, 8,718. These figures include the casualties to persons trespassing, of whom 4,865 were killed and 5,251 were injured. The total number of casualties to persons other than employees from being struck by trains, locomotives, or cars was 4,569 killed and 4,163 injured. The casualties of this class were: At highway crossings, passengers killed 1, injured 10; other persons killed, 837; injured, 1,564; at stations, passengers killed, 24; injured, 90; other persons killed, 381; injured, 571; at other points along track, passengers killed, 6; injured, 37; other persons killed, 3,320; injured, 1,891. The ratios of casualties indicate that 1 employee in every 411 was killed and 1 employee in every 21 was injured. With regard to trainmen—that is, engineers, firemen, conductors, and other trainmen—it appears that 1 trainman was killed for every 133 employed and 1 was injured for every 9 employed.

In 1905, 1 passenger was killed for every 1,375.856 carried, and 1 injured for every 70.655 carried. For 1904 the figures show that 1,622.267 passengers were carried for 1 killed, and 78,523 passengers were carried for 1 injured. For 1895, 1 passenger was killed for every 2,984.832 carried, and 1 injured for every 213.651 carried. With respect to the number of miles traveled, the figures for 1905 show that 44,320,576 passenger miles were accomplished for each passenger killed, and 2,276,002 passenger miles for each passenger injured. For 1904 the figures were 49,712,502 passenger miles for each pas-

senger killed, and 2,406,236 passenger miles for each passenger injured. The figures for 1895 show that 71,696,743 passenger miles were accomplished for each passenger killed, and 5,131,977 passenger miles for each passenger injured.

First Ruling Under New Law

An application recently was made to the Commission by the Boston & Maine Railroad for permission to reduce rates on ice on notice of five days. The Commission issued this order:

"That the Boston & Maine Railroad, on account of urgent public demand for ice in Boston and surrounding towns, and owing to the shortage of the ice crop and for other good reasons shown, be granted authority to put in lower commodity rates on ice from points in Maine, Northern New Hampshire and Vermont to Boston and surrounding towns on five days' notice to the Commission."

Recent Decisions

The Commission has recently decided these cases:

By Commissioner Clements in the case of Davenport Brothers & Co. against the Southern Railway Company and the Seaboard Air Line Railway involving the justice and reasonableness of the rates on canned goods, grain, flour, hay and packing-house products from Cincinnati, Ohio, and Memphis, Tenn., respectively, to Helena and McRae, Ga., respectively, as compared with the rates on the same commodities from the same points of origin to Cordele and Fitzgerald, Ga., it being claimed that such rates subject Helena and McRae to undue prejudice and disadvantage. The complainants are partners engaged in a wholesale commission and brokerage business at Helena and McRae, Ga. The Commission thinks that the defendants could well afford to extend the Cordele rates to the points in question, and that the situation of Helena and McRae is so similar to that of Cordele as to require the application of Cordele rates to the first named places. The Commission believes the rates in question from Cincinnati and Memphis by the defendant lines are unreasonable and unjust, and that they should not exceed those now in effect to Fitzgerald from the same points of origin.

Long and Short Haul Rates on Coal

By Commissioner Prouty in the case of the Hastings Malting Company against the Chicago, Milwaukee & St. Paul Railway Company involving the rates of that carrier for the transportation of coal, both anthracite and bituminous, from Superior, Wis., to Hastings, Minn. The Commission concludes that the defendant carrier does not apparently violate the third or fourth sections of the Interstate Commerce Act by maintaining lower rates to Afton than to Hastings, but the rates to Hastings are unreasonably high. At the time of the decision, the Commission had no authority to fix the rates of the defendant, but stated that it would, ordinarily, upon the finding of

fact, direct the defendant to cease and desist from its present rates. Under the circumstances, however, no order was made.

MAY ASK FOR CHANGES

Much interest has been aroused by the announcement that members of the Interstate Commerce Commission have been in conference with Chairman Hepburn, of the House Committee on Interstate and Foreign Commerce, with reference to possible changes in the rate law, to be undertaken at the coming session. It develops that the most probable and important piece of new legislation is one giving the Commission power over railroads' classifications of freight. This is hardly second in importance to control over rates; indeed, it is developing even greater importance just at present.

The Commission's anxiety for control over classifications is based partly on its desire to prevent wholesale indirect raising of rates, and partly on the necessity for simplifying classifications. At present the complications of classifications are so many and varying that it is almost a profession to know the bearing of classifications on rates in all territories and on all roads. Consequently the commission is disposed to establish a single, uniform classification, and to enforce it in all parts of the country. This would really be one of the greatest benefits that could well be conferred by the Commission on the average shipper.

"There is more need for it now than ever before," explained a member of the commission, "because the railroads are not going to raise rates, by direct action, very much in future. They don't like to do it, in the present condition of public interest in railroad operations. They will make most increases hereafter by changes of classification, and if we don't have power over these we will be able to accomplish little. A single order changing a classification might change thousands of rates that are in daily use; but to change those rates back, the Commission would have to consider the different particular instances and make a great number of orders. The easy way out is to give us power to make a uniform classification, and that is what we want and ought to have."

COCKRELL FOR UNIFORMITY

Regulations tending to secure uniformity in the conduct of the various transportation companies engaged in interstate and foreign commerce, in the opinion of Commissioner Cockrell, of the Interstate Commerce Commission, will prove the most effectual method of executing the railway rate law. Commissioner Cockrell said that for some time he had had in mind, and would press his views on the other members of the Commission in the hope of securing their approval, four propositions which would accomplish the desired result. These were a uniform system of reporting, accounting, bookkeeping, etc.; uniform classification throughout the United States and territories; uniform forms of schedules, rates, tariffs,

charges and rules; the requirement that the railroad shall perform the entire work of transportation of freight from place received to place of destination.

In explaining his position on this subject Commissioner Cockrell said that some doubt had been expressed with regard to the requirements of the law with respect to uniform classification, but he said that the Commission had information that every railroad in the United States except one has signified its willingness to comply with a regulation of that kind. He did not believe it would be necessary to go to Congress for additional legislation on the subject. The Commission has received advices from Professor Adams and his committee of seven, who are looking into the question of uniform system of bookkeeping, that they are very sanguine over the outcome of their work.

"If my views on this matter are adopted," said Mr. Cockrell, "we will have a system which will enable the transportation service of the country to be completely and effectively regulated, and at the same time the opportunities for rebates, discrimination and undue preference will all be eliminated."

MR. STICKNEY'S LETTER

At the hearing before the Interstate Commerce Commission on the petition of cotton carrying railroads for authority to change rates without as much as thirty days' notice extracts were read from a letter which had been received by the Commissioners from "a railroad president." Counsel for the railroads protested against the introduction of anonymous statements and they asked that the writer's name be made public. It was withheld.

This is the letter in full, addressed to the Interstate Commerce Commission on September 10 by A. B. Stickney, President of the Chicago Great Western Railway Company:

SEPTEMBER 10, 1906.

The Interstate Commerce Commission, Washington, D. C.:

GENTLEMEN—Your notice inviting the various carriers to express themselves upon the petitions of various cotton carrying roads for authority to change rates on export cotton upon less than thirty days' notice has just come to my attention.

I can conceive of no reason which would apply to cotton which would not, with equal force, apply to export grain, flour, live stock, and packing house products. Generally speaking, grain, flour, and packing house products have been under the old law exported at special contract rates, and a special tariff has been issued to cover each individual contract, which has been filed in your office, sometimes before, but more frequently after, the shipment has actually been made.

If you will examine the schedules on file in your office you will find thousands of so called expert schedules which bear on their face evidence that they are in reference to a special contract which has been made between the railway company issuing it and some particular shipper, who is, thereby, under color of law, given preference over all of his competitors, which is the very thing the law was intended to prevent. The thirty days' notice makes it only a little more difficult to manipulate the export rates for the benefit of the larger shippers.

It was by means of such schedules that the export rate on

packing house products from Kansas City was manipulated. The court held the schedule and the practice unlawful, assessed the maximum fine, and regretted that the law did not permit imprisonment. The present law permits imprisonment.

If you wink at the practice of exporting cotton under such schedules, as requested, you will later have to wink the other eye at the same practice in regard to the export of wheat, flour, and packing house products, and I shall then be compelled to go out of the export trade or to compete against such practices by adopting the same methods.

All officials of railway companies sat in the shadow of the penitentiary from the passage of the first law, which imposed imprisonment, until the passage of the Elkins law, which abolished imprisonment. The new law re-enacts the imprisonment penalty, and for this reason I have the right to protest, and do protest, against the Interstate Commerce Commission letting down the bars which will render the efforts of a company to obey the law useless, and which will result in a flood of illegal practices, and thus compel railway officers to again sit in the shadow of the penitentiary the remainder of their lives.

The Commission should understand that the eyes of every freight agent and of every shipper who has heretofore received discriminating rates, as well as the eyes of all the people of the United States, are fixed upon the Commission, to see whether it is in earnest in the enforcement of the new law in its integrity, or is going to pursue a practice of emasculating the law by winking at illegal practices.

I once heard the following conversation between a freight agent and a shipper in regard to the payment of a rebate upon certain shipments:

Shipper—I spoke about the rebate before I made the shipment.

Freight Agent—Yes, and I said no.

Shipper—I know you said no, but there was a queer look on your face which I thought meant yes.

The Commission is in the same position as the freight agent. Every wink, every queer look on the face will receive a construction by the freight agents and the shippers who are watching them.

There will be possible representations made from time to time, to the effect that if this or the other modification of the law is not instantly winked at by the Commission the whole fabric of trade will be destroyed. The usual song and dance of conditions and competitions with the Orient, and competition with the Argentine will be sung and danced in the future as in the past, but as a matter of fact, trade will go on. The fabric of American commerce was not built up in a day, and is too firmly established to be destroyed instantaneously. There is always time enough to consider conditions before they will work destruction.

The real condition which the Commission is facing in the present inquiry is: Shall railway companies have general export schedules as a basis for all cotton growers and dealers to trade on, while a few dealers shall have a secret understanding with the carrier that they may trade on a lower basis of rates, and when they have scooped their competitors and effected the trade, an instantaneous "midnight tariff" may be put in to cover the particular shipment, to expire when the shipment is made.

The producers, manufacturers, and merchants of this country demand open, known, and reasonably stable export rates, as well as domestic rates, so that all can sell their wares and make their trades upon the same basis of rates; not private and secret understandings between the railways and a few, that the few may trade upon a lower basis of rates which will give them the monopoly in their line, and when their transactions are effected upon this lower basis of rates, that the railway companies will protect them by issuing instantaneously "midnight tariffs" naming the lower rates.

Yours truly,

A. B. S.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Rates on Cotton From Dallas, Tex.

To the Editor of Freight:

SIR—We had the pleasure of a call from one of your representatives today, and, as we wanted some information in regard to freight rates, he said you would be apt to obtain same for us as soon as possible.

We tried for a week to get these rates, but have been unable to do so.

We would like a rate of freight, all rail, from Dallas, Tex., to Montreal, Canada, and also from Dallas, Tex., to Albany points.

We wish this rate on cotton in "square bales, compressed."

Your early attention to the matter will oblige,

Yours truly, R. T. WILSON & Co.,
C. M. Calhoun.

NEW YORK, September 19, 1906.

Confirming our telephonic reply this afternoon (September 21) to your inquiry of the 19th inst., concerning the rates on cotton in square bales, compressed, all rail, from Dallas, Texas, to Montreal, and from Dallas, Texas, to Albany points, the rate per 100 pounds, Dallas to Albany is 90 cents; Dallas to Montreal, 97 cents; water and rail rates, 2 cents less; carrier's option of compressing.

Damages May Be Collected

To the Editor of Freight:

SIR—We respectfully refer to our favor of August 7, relative to the assessing of storage charges on L. C. L. shipments, and your prompt reply, the gist of your opinion being that the railroad company is entitled to compensation for the storage furnished, provided it is reasonable. We understand that some of the railroads have positive instructions with their local agents not to allow any oil to be put into their warehouses, consequently it stands out in the weather and is sometimes damaged thereby. It does not seem to us that this is storing goods and protecting them against damage, and we would like to have your further opinion, if, under such circumstances, you still feel that the railroad company is entitled to collect storage charges.

Yours very truly,

PEERLESS TRANSIT LINE,
W. E. MacEwen.

CLEVELAND, Ohio, September 11, 1906.

INQUIRY PEERLESS TRANSIT LINE.

If a carrier in holding merchandise shall not take proper care of it, but allow the same to be injured by exposure to the elements, or otherwise become damaged, it is liable for its failure to exercise appropriate diligence in the premises. They are bailees for hire and must exercise ordinary diligence in caring for and protecting property. It is difficult to lay down a general rule applicable to the inquiry. The storage charge may be equal to, greater or less than the amount of damage—all dependent upon the care which the railway gives to the property. As a warehouseman, the carrier has a right to make a reasonable charge for the storage of property; the owner of the property has a

right to recover from the carrier damages which result from the want of a proper amount of diligence in caring for the property. The storage may amount to \$1; the deterioration of the property and the package due to the want of care may amount to \$10. The right to charge storage, and the right to have proper care used when storage is charged, are not dependent upon the amount charged for storage or the value of the goods lost or injured.

Order Bills of Lading

To the Editor of Freight:

SIR—In your August issue, under heading of "Bill of Lading Drafts," we notice your answer to your correspondent in connection with that very important subject, and as we are very vitally interested, your reply does not seem to us to answer the point made by your correspondent.

You simply state that "It is to be seriously regretted that the notified party or the one for whom the goods are intended should attempt to secure possession of the property without surrendering the bill of lading," etc. You do not, however, make any comment as to whether the railroad company has the right to surrender the goods without the bill of lading.

Our understanding of Rule No. 9 is that they have not, and we have had a great many examples of railroad red tape in connection with "to order" shipments where, unfortunately, bills of lading have been lost. In instances of this character it was necessary to give a bond for double the value of the goods before they would surrender them to the proper party.

The question is, if they are so zealous in protecting their rights before issuing a bill of lading of this kind, it must be self evident that they could be held responsible for delivering it without. Therefore, if their agent surrenders the goods without receiving the original bill of lading, are they not equally responsible? It seems to us they are.

Yours very truly,

THE BRUNSWICK-BALKE-COLLENDER COMPANY,
TAROF, Tr. Mgr.

NEW YORK, August 16, 1906.

INQUIRY BRUNSWICK-BALKE-COLLENDER CO.

The various State decisions and laws upon the liability of a carrier who has issued an order bill of lading and then delivered the property covered thereby without requiring the surrender of the document, are at variance. The tendency of the decisions is to the effect that if the carrier surrender the property without taking up the bill of lading it is liable for the value thereof. Certain courts, however, while following the doctrine go farther and do not permit one to whom an order bill of lading has been transferred after the surrender of the property to recover from the carrier. The reason stated for this is that at the time of the transfer the bill of lading is a spent bill of lading without force and value. If, however, the document has remained in possession of a *bona fide* holder from a time prior to the surrender of the property to one not entitled these courts permit him to recover for the value of the goods.

No one should be required to give bond for double the value of goods, if the order bill of lading be lost. Certain it is, that one of the prominent carriers which had in force this rule recently changed it so that one now bonds to the value of the goods and freight.

Acceptance of Invoice Weights

To the Editor of Freight:

SIR—Our people here have been notified by the railways that invoice weights will not be accepted in interstate traffic except in those particular cases where express authority is published in the freight tariff making it permissible to do so. There are a great many lines which are sold on the basis of invoiced weights, and all settlements and cost are based on that, and it would be an annoyance to our people to have these invoice weights revised and to have bills rendered for freight on the basis of local scale weighings instead of continuing the practice of many years past of allowing invoice weights to obtain in freight settlements. We are told that this ruling has been made because of the new rate law. The question of weights is one of importance to many members of our Jobbers' Association, and we would like to ask whether complaints have come to you from other quarters, and whether this is purely a local issue or now a general practice of railroads all over the country.

We shall be obliged to you for your consideration of this matter.

Yours very truly,

C. D. WILLARD,

Secretary, Associated Jobbers of Los Angeles.
LOS ANGELES, Cal., September 19, 1906.

INQUIRY ASSOCIATED JOBBERS OF LOS ANGELES.

No recent ruling appears to have been filed with the Interstate Commerce Commission concerning acceptance of invoice weights. Rule 1, Western Classification No. 40, effective April 1, 1906, is supposed to govern upon this point and reads as follows: "All articles will be charged at gross weight, without regard to weight given by shippers and inserted in bills of lading; except that when an estimated weight is given in the Classification, such estimated weight will apply unless the actual weight is greater."

There is no requirement of the new rate law which specifically controls the invoice weights. The law prior to its amendment was as effective in the matter of weights as the present law.

The carrier is entitled to freight upon the correct weight of the commodity, whether that correct weight be invoice weight or not; certain specific articles are transported at net weight, while others are transported at gross weight—the latter being the weight of package and contents.

No similar complaints have been made concerning any change in the governing weight of freight to be transported.

Responsibility for a Shortage

To the Editor of Freight:

SIR—We wish you would please give us your opinion as to who is responsible in a case like the following: We imported 160 bales of sheepskins, the delivery clerk's receipts at the docks show our teamster as

having receipted for 160 bales, and teamster has railroad company's receipts for 160 bales. When bales were received by us same checked out 158 whole bales and two bales, which were evidently made up of one bale becoming broken open and contents being tied up in two packages. On investigation with the railway people they find that they receipted for 160 bales, and their receiving weights show that two of these agreed with our records—that is, two of them weighing only sufficient number of pounds to cover the weight of one whole bale. The railroad company will not entertain any claim, maintaining that they have fulfilled their obligations in delivering the same number of packages or bales in the same condition as received from our teamster. Teamster will not entertain any claim, stating that 160 whole bales were delivered to the railroad company. As records are clear with the wharfage people, we cannot make claim on them.

Trusting to receive reply as to who is responsible in a shortage of this kind, we are,

Very truly yours,

WINSLOW BROTHERS & SMITH COMPANY,

Per G. W. Newman.

NORWOOD, Mass., September 6, 1906.

INQUIRY WINSLOW BROTHERS & SMITH COMPANY.

It is the duty of a common carrier to deliver to the consignees the same quantity of merchandise and in the same condition that he received it. This same duty is applicable to wharfingers and other bailees. It appears in this case that the consignee received 158 whole bale and two part bales; the drayman received and delivered the same; the railroad received and delivered the same; the wharfinger received and delivered the same. Manifestly, the steamship company or wharfinger abroad or consignor is liable for the deficit.

It should be remembered, however, that the paper receipt is not conclusive, and if it can be shown that the drayman or the railroad or the wharfinger, each holding receipt for 160 bales from the party to whom each delivered the skins, and upon investigation it be found that the receipt is inaccurate, that document is open to evidence to show the error in it.

It seems to us that your claim should be made first against the steamship company. If this carrier can establish the delivery of 160 full bales, then your next recourse is against the teamster.

It is evident, from your statement of the case, that the railroad company is in no way responsible for the shortage.

CAR STAKE QUESTION SETTLED

The Interstate Commerce Commission while in Chicago effected in a few minutes one of the biggest rate cuts in its history when it settled the controversy between the lumbermen and Western railroads over the question of the payment of freight on the stakes used to hold lumber shipments on flat cars.

At the suggestion of Commissioner Lane the railroads agreed to allow 500 pounds to the car for these stakes. It is estimated that the concession will mean a gain to the lumbermen of the West, and a consequent reduction in the revenues of the carriers of \$1,000,000 a year.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Case of U. S. v. R. D. Wood & Co.

In the case of the U. S. v. Wood (146 Fed. 405), R. D. Wood & Co., of Philadelphia, were charged with accepting rebates in violation of the interstate commerce law. It appeared that Messrs. Wood & Co. had sold to the city of Winnipeg iron pipe and had entered into a contract with the Philadelphia general agent of the Great Northern Railway, a carrier subject to the provisions of the Interstate Commerce Act, to transport the pipe from points in New Jersey and Pennsylvania to Winnipeg, the transportation to be over the B. & O. and P. & R. to the lakes, thence by the Mutual Transit Company to Duluth, and thence by the Great Northern to Winnipeg, at 49½ cents per 100 pounds. This rate was the sum of the rates from point of origin to Duluth, 24½ cents, and from Duluth to Winnipeg, 25 cents. The amount of rebate which was alleged to have been paid was \$1,230.59 on the total shipment of 1,500 tons. Among other defenses was that the water carrier was an independent line. The court in its charge to the jury held that the lawful rate on the shipment was the sum of the two rates, namely, 49½ cents, and that neither of the lines could charge a greater or less sum than that specified in the filed and published schedule of rates to which it was a party. Interpreting the Elkins law, the court indicated to the jury that, while it is unlawful to grant rebates from a joint tariff which has been filed and published either by the carrier who transports the property or by the connecting carrier, it is not made a criminal offense to receive a rebate from the joint rate unless such joint rate has been both filed and published. The charge of the court to the jury, which acquitted the defendants as far as it related to the Elkins law, was as follows:

"Under the original act, as amended in 1889, as to the carrier, any deviation from the joint rates specified in the schedule filed was unlawful, and the Elkins act so amended this as to the carrier that any departure from a joint tariff filed by it, or any departure from a joint tariff published by it, or any departure from a joint tariff filed or published in which it participated in the rates so filed or published, was made unlawful. That part of the Elkins act which makes it unlawful for the carrier to offer, grant or give any rebate, concession or discrimination in respect to the transportation of property, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariff published and filed, may be extended by the subsequent clause as to the carrier, so as to make it unlawful to offer, grant or give a rebate on joint tariffs in which such carrier participated, but as to the shipper or a person receiving a rebate the tariff must be filed and published. In other words, it may be unlawful for a carrier to give a rebate, concession or discrimination on a joint tariff filed by it, or on

a joint tariff published by it, or on a joint tariff in which it participated when filed by another, or on a joint tariff in which it participated when published by another, but it is only unlawful for a shipper to receive a rebate on a joint tariff which is both filed and published. The act, so construed, works no injustice to either the carrier or the shipper. The carrier knows whether it has either filed or published a joint rate, or whether it has participated in a joint rate filed or published by another, and if it departs therefrom it does so willfully and with knowledge; and if a shipper receives a rebate on a joint tariff which has been both filed and published, he does so with notice of the lawful rate, and as to him, when the rate is filed and published, he is bound to take notice, and the law will not excuse him if he fails to inform himself when the opportunity is afforded, which the law provides by requiring the filing and the publishing of the rates for his information. And as to the question of actual notice to the shipper in this case, you will say from the evidence of Mr. Morton, who was the representative of the defendants in carrying out the transaction, together with the other evidence, whether or not the defendants knew of their own knowledge, or through their agent, what the joint rates were as filed and published at the time the contract was made. You will recall what knowledge Mr. Morton showed with regard to rates—not only those involved in this controversy, but the rates, both local and through, on property transported across the entire continent from Philadelphia to California. But aside from the question of the defendants' actual knowledge, they are bound to take notice of joint tariffs filed and published, and if they receive a rebate, concession or discrimination, either themselves or by their traffic manager, they are responsible." (U. S. v. Wood, 145 Fed. 405.)

Common Carriers and Their Liabilities

What constitutes a common carrier and its liabilities with respect to property intrusted to it were succinctly stated by the Superior Court of Delaware in the case of Carpenter v. B. & O. R. Co. (64 Atl. 252). The court said:

"A common carrier is one who undertakes and exercises, as a public employment, the transportation or carriage of goods for persons generally, from place to place, whether by land or by water, and to deliver them at the place appointed, for hire or reward, and with or without a special agreement as to price." McHenry v. P., W. & B. R. R. Co., 4 Har. 448. "A common carrier is bound to exercise the strictest care, and to deliver safely at their place of destination the goods intrusted to him. He is regarded by the law in the light of an insurer; and, in case goods are injured, lost or

destroyed, nothing will excuse or discharge him but the act of God or of the public enemies. By the act of God is meant such inevitable accident as cannot be prevented by human care, skill or foresight, but results from natural causes, such as lightning and tempest, floods, inundation," etc. "This rule of the common law has been spoken of as severe and rigorous; but, like most of the principles of the common law, it is founded in wisdom and dictated by sound policy. The exigencies of society require the adoption of the rule. Men engaged in the various business transactions of life are obliged from necessity to intrust common carriers with their goods. If such carriers are to be excused from all loss, destruction of or injury to goods, in case it be shown that they have used due care, precaution or attention, the party employing them could never show the want of such care, unless he had an agent to accompany his goods during the whole time occupied in their transportation. The carrier might at all times by fraud and collusion, or by means of his own agents or servants, throw the burden of proof upon the owner or consignee of goods, by making out a statement of facts, which, although untrue in itself, would show the exercise of ordinary care and diligence. Therefore, in actions against common carriers, founded on their ordinary liability for the loss of goods, the inquiry is, not whether the carrier has used due care or been guilty of negligence, but whether he can show that the loss happened by inevitable accident or by public enemies." *McHenry v. P., W. & B. R. R. Co.*, 4 Har. 449; *Pennewill v. Cullen*, 5 Har. 241; *Reed v. P., W. & B. R. R. Co.*, 3 *Houst.* 206; *Klair v. Wilm. Steamboat Co.*, 4 *Pennewill*, 53; 54 *Atl.* 694.

"The above stated rule of law as to the liability of the carrier is subject to certain qualifications, as, for example, the carrier is not held responsible for loss or injury occasioned by bad or imperfect packing or other carelessness or negligence of the shipper, or for ordinary wear and tear and chafing of the goods in the course of their transportation, or for their ordinary loss or deterioration in quantity or quality, or for any inherent natural infirmity or tendency to damage, depreciation or decay, etc. *Truax v. P., W. & B. R. R. Co.*, 3 *Houst.* 245; *Klair v. Wilmington Steamboat Co.*, 4 *Pennewill* 52, 54 *Atl.* 694. Where goods are injured during transportation, under such circumstances as to render the common carrier liable, the measure of damages is the difference between the value of the goods in their damaged state and what would have been their value if delivered in good order, unless there was a special agreement between the parties fixing some other mode for the ascertainment of such damages. Where there is a contract fairly made between the shipper and the common carrier, whereby, in consideration of a reduced rate of freight, it is agreed that in case of loss or injury the carrier shall be liable only to the extent of an agreed valuation of the goods, such contract is valid and will operate as a limitation upon the liability of the carrier. *Hart v. Penna. R. Co.*, 112 *U. S.* 331;

Balto. & Ohio R. R. Co. v. Doyle (United States Circuit Court of Appeals for Third Circuit, March term, 1904), 142 *Fed.* 669."

IMPORTANT DECISIONS IN BRIEF

The Supreme Court of South Carolina has held that under a statute of that State concerning the making of claims, that all that is necessary is to give such information as will indicate the nature of the claim, and that it is unnecessary under the statute to attach to the claim the freight bill, receipt or bill of lading. (*Hawes v. Sou. Ry. Co.*, 53 *S. E.* 285.)

In an action against an express company for negligent delay in making delivery for shipment, it was held that the measure of damage is the difference between the market value of the goods at the time they are delivered and their value at the time they should have been delivered. And, where there was no difference in the market value, the damage was held to be nominal only. In the same case it was held also that where a carrier had agreed to transport goods within a specified time and a demand was made for them on the day on which delivery was agreed upon, but before the goods had arrived, an action for the conversion of the goods would not lie. (*Clark v. Am. Exp. Co.*, 106 *N. W.*, 642.)

Where, under a statutory provision, providing that if a common carrier accept a shipment for a place beyond its usual route, he must, unless he provide otherwise, deliver at the end of his route to some other carrier according to instructions, and delivering to such carrier the liability of the initial carrier ceases, it was held that where a transportation company agreed to transport merchandise from San Francisco to Nome, Alaska, per steamer from San Francisco to Seattle, and at the latter place deliver same to a connecting carrier or forwarder, the initial carrier was not liable under the statute. (*Fairfield v. Pacific Coast S. S. Co.*, 84 *Pac.* 438.)

The Supreme Court of Washington has held that where a common carrier contracts to transport goods beyond its own line, he is liable for loss or damage independent of the fact whether or not the injury occurred on the initial line. And, further, that where a bill of lading provided in fine print, which was somewhat obscured by stamps, that in case of injury to the goods only the carrier in whose possession the goods are at the time of the injury shall be liable, can not be regarded as part of the contract of carriage. The case arose in the shipment of a car of pianos; the originating road was the New York, New Haven & Hartford, and for the original bill of lading there was substituted one of the Canadian Pacific Railway. The goods were damaged in transit through the negligence of the Canadian Pacific Railway. In deciding the case the court said:

The only question which it is necessary to discuss in this case is a legal one, viz., what is the responsibility of the defendant company where goods were shipped under the circumstances under which these goods were shipped, the goods passing over the lines of different companies and being injured in transit? The court in this case found that it was not possible to determine on what particular line the damage occurred. We will consider the case as though the defendant here were the original company to which the goods were consigned, which it made itself, we think, by issuing the bill of lading or receipt, which stands for the contract between the shipper and the common carrier. Was the defendant responsible to the shippers for damages done to their goods beyond the termination of its own lines? It may be conceded, we think, that a carrier is under no common law obligation to transport goods beyond its own line, and it may also be conceded that it cannot exempt itself from liability for its own negligence on its own line.

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

A special committee composed of C. R. Russell, J. M. Ellis, and R. E. L. Cope has been appointed by the Commercial and Industrial Association of Union Springs to lay before the Interstate Commerce Commission the matter of giving to Union Springs a competitive freight rate.

The Maritime Shippers' Association, of Montgomery, joined with the Mobile Cotton Exchange in the successful effort to have the thirty day clause in the Interstate Commerce Law, prescribing the filing of rates for cotton, rescinded.

CALIFORNIA

An important action has been taken by the Southern Pacific to allow the California farmers to compete with the Eastern trade. The freight rate on apples to Chicago and main line points west of that city will be reduced from \$1 per hundred pounds to 85 cents. The apple crop all through the East is large this year, and the fruit is selling at such reduced prices that if the local farmers had to pay the old rates they would have been unable to compete. The reduction allows the Western farmers a margin to figure on. The California crop has been very large this year.

The freight blockade in Oakland is ended and Southern Pacific officials have removed the embargo on five or six classes of bulky freight which had been in existence for several weeks. Freight shipments coming to San Francisco and other State points are moving freely, showing jobbers are doing an excellent trade with interior customers. The Southern Pacific and Santa Fé are handling jointly out of this city about 300 cars of freight daily.

The freight officials of the Southern Pacific have removed the embargo placed several weeks ago upon California wine shipments to San Francisco. The officials say that the rapid clearing out of the congested freight yards at Oakland and San Francisco permitted the raising of the bar on wines and allowed the immediate shipment from the country.

As a result of the partial settlement of the differences of the Sailors' Union and the steam schooner owners San Francisco is to have a cheaper rate on lumber from the Puget Sound country.

Freight service over the California & Northeastern Railroad, from Weed to Klamath Falls, Ore., has been opened.

Fruit growers received with joy the news that the Union Pacific will spend \$9,000,000 for 6,000 refrigerator cars before the first of next year.

San Bernardino is still complaining that it is being discriminated against in the matter of freight rates from the East in favor of Los Angeles.

COLORADO

The Pueblo Transportation Association has been organized to fight freight discriminations against Pueblo shippers. These officers were elected: J. F. Vail, president; George Holmes, vice president; T. A. Duke, treasurer; Asbury White, treasurer. The board of directors was elected for the first year, composed of the following persons: Joseph P. Trickett, C. W. Crews, Asbury White, Charles Henkel, C. J. Haines, J. H. Jenkins, C. W. Daniels, F. J. Burch, G. L. L. Gann. The association has engaged J. G. Chapman as transportation commissioner. Mr. Chap-

man is well and favorably known in Pueblo and eminently qualified for his new work. His office will be in Central Block.

Adjustment of freight rates on at least two products extensively used in Denver by manufacturers and dealers is promised by the Trans-Missouri Freight Bureau.

It has been practically agreed to allow a reduction on window glass from Missouri River points to Denver. The present freight rate is 50 cents per hundred pounds, and a cut of 20 cents will be allowed to permit lumber dealers and others in the Denver market to compete with Eastern dealers in the local markets.

Another and highly necessary reduction probably will be allowed on rates from the same point to Denver on steel plate as against rivet pipe. Heretofore it has been almost impossible for local pipe manufacturers to compete with the Eastern market, owing to the arbitrary freight rate imposed on steel plate.

Reductions in class and commodity rates agreed on by the Trans-Missouri Freight Bureau are to become effective between October 15 and 20, and have already been promulgated by the Colorado Midland. They apply to traffic from Colorado common points to Utah common points, and from the latter to Chicago, Mississippi and Missouri River points. Utah points are placed on an equal basis with Butte and other Montana common points. The old and new rates are as follows:

	Old Rates		New Rates
	West.	East.	East and West.
First class ..	\$1.85	\$2.00	\$1.80
Second class ..	1.60	1.72	1.52
Third class ..	1.36	1.40	1.26
Fourth class ..	1.15	1.20	1.08
Fifth class ..	.96	1.00	.90
Class A	.88	.92	.88
Class B	.74	.80	.72
Class C	.68	.72	.64
Class D	.56	.60	.44
Class E	.50	.52	.36

The changes made will affect schedules from the Atlantic seaboard. The subject is receiving attention and a new tariff probably will be announced at an early date, to go into effect simultaneously with that of the lines in the Trans-Missouri bureau.

Two ratings have been made for canned goods, one applying to everything which comes under this head except peas and beans, which have a separate rating. An important reduction is the 5-cent cut on 100 pounds made upon emigrants' movables. It applies to East-bound consignments as well as West-bound. The cut holds good on traffic between Utah common points and Missouri River common points only. The former rate was 50 cents a 100 pounds.

New classifications necessitated new rates. Bottles manufactured of common glass are an example of a new classification. Blasting caps in less than carload lots were put under first-class rates from the various river points. Blasting powder in consignments of more than 10,000 pounds and below 20,000 pounds has been placed under the same scale. Green hides (Eastbound only) have two ratings between Utah common points and the St. Louis market. One applies to consignments for St. Louis and East St. Louis, and the second to hides consigned to markets north of St. Louis.

The new rate for the first is \$1.19 7-10 a 100 pounds. The old rate was \$1.33. The second new rate is \$1.14 1-5 a 100 pounds. The old rate was \$1.33 also.

Furniture is divided into numerous classes for the convenience of freight men and shippers.

The Rock Island has decided on a horizontal reduction of 20 per cent. in freight rates on Colorado shipments as far East as Levant, Kan. It is expected that other roads will have to swing into line with their bars down. Colorado manufacturers and jobbers are jubilant over the prospect, as they will be able to compete with Eastern products in territory from which they have long been excluded.

The Interstate Commerce Commission may meet in Denver in a short time to hear several complaints against railroads operating between the Missouri River and Denver, which Secretary Thomas C. Scott, of the Colorado Manufacturers' Association, is preparing.

FLORIDA

A through freight service has been inaugurated from Chicago to Jacksonville. Merchandise cars for less than carload shipments will leave Chicago for Jacksonville daily, going over the Illinois Central, the Nashville, Chattanooga & St. Louis, the Central of Georgia and the Georgia Southern & Florida. Their time of departure from Chicago will be 11 p. m., and they will arrive at Jacksonville at 11 a. m. the fourth day following. Heretofore it has taken eight or nine days for goods to make the trip.

The Clyde Steamship Line has placed its new freighter, the Katahdin, in commission between New York and Jacksonville.

GEORGIA

It is expected that the new freight depot of the Southern Railway at Atlanta will be finished some time this fall.

A gravity elevator, which transports goods from the fifth floor of the building through a monster steel tube, with a spiral slide, has been put in by the J. K. Orr Shoe Company, to carry boxes and cages from the top story to the first floor. The elevator will be an innovation among Southern mercantile houses and manufacturers, as it is the first one ever installed south of Philadelphia.

The Southern Railway has refused to transfer freight shipments from the Louisville & Nashville Railroad to points on the Southern's spur tracks in and around Atlanta. The ruling has caused great inconvenience and expense to merchants and other receivers of freight in car lots. But little information on the subject could be obtained at the offices of the two railroads, the Southern officials being reticent and the Louisville & Nashville freight men indisposed to talk on the subject, though admitting that the Southern had refused their freights.

The Satilla, one of the steel freight steamships being built for the Brunswick Steamship Company, has been launched at Quincy, Mass.

The Atlanta city council has adopted a resolution which allows the Louisville & Nashville to establish entrances to its freight yards on East Hunter street.

A complaint was filed with the Interstate Commerce Commission a few days ago by J. J. Waxelbaum & Co., local commission merchants, which will prove of great interest to peach growers in Georgia in particular and in general to the fruit and produce trade all over the country. Mr. Waxelbaum, in his complaint to the Interstate Commerce Com-

mission, charges that the rate on peaches from Macon and Atlanta is unreasonably high to the larger markets, including Washington, Baltimore, Philadelphia and New York. The rate to these points, he showed, are higher than to Pittsburg and Buffalo, although some of the shipments to the latter points pass through the former cities en route to their destination.

In view of the fact that this complaint is the first from a dealer in fruits and produce filed since the enactment of the new rate law, the case should prove of much interest to the trade all over the country.

ILLINOIS

George W. Jackson, consulting engineer of the Illinois Tunnel Company, says 45 miles of tunnel has been constructed and equipped, and nearly all the system is ready for trains. Connections have been made with most of the freight stations and with many large business houses. The operations for a month have been carried on successfully, demonstrating the practicability of the system and its many mechanical appliances. Not a single claim for damage to property has been filed.

The Illinois Manufacturers' Association has opened a campaign against the present system of freight classification in the United States. These resolutions were passed:

Whereas, There is a wonderful lack of uniformity between the classifications used by the railroads in the three groupings known as Official, Western and Southern territory; and,

Whereas, There is a general feeling among shippers that the classifications, aside from being out of joint with each other, work an injustice in many other respects and should be thoroughly revised; and,

Whereas, The transportation of goods is a matter of contract between the owner of the property to be transported and the carrier, and one party to the contract should have an equal voice with the other; and,

Whereas, During the last few years the carriers have increased their rates and added to their revenues millions of dollars by changing classifications; therefore, be it

Resolved, That the president of the Illinois Manufacturers' Association is requested to appoint a committee whose duty it shall be to take up with the carriers and the classification committees the matter of a general revision and re-vamping of the classification.

It is believed that all Chicago railroads will be very short of equipment, particularly cars, during the coming crop movement.

INDIANA

The quarry interests of the oolitic belt are in a confused state because of the unsettled rates for shipping stone under the new rate law. The almost universal rule here is for the shipper to make the rate to be paid at the quarry, and, until the uniform tariff is announced, it is difficult to make an intelligent bid on large contracts, many of which are now pending.

KANSAS

Santa Fé is short 850 cars, and a car famine is freely predicted.

The Santa Fé has made two rulings lately in regard to hauling freight for employees. Heretofore the company hauled the household goods of employees from one point to another when they moved their place of residence with-

out charge. A ruling was made that hereafter the road would charge full freight rates for all household goods carried for employees. Then a notice was received to the effect that this rule would apply only to those employees whose change in location was at their own request. In other words, if the company arbitrarily transfers an employee it will haul his household goods free.

MARYLAND

An indignation meeting was held recently at the Chamber of Commerce, Baltimore, and the Pennsylvania Railroad was scored for the action it took in sending a notice to the effect that an embargo had been placed on all oats for Baltimore. The text of the notice, which was posted on 'Change through H. W. Kapp, the general agent of the Pennsylvania Railroad in this city, is as follows:

"I beg to advise you that an embargo has been placed on all shipments of oats destined for Baltimore, except those for export from this point."

The committee on terminals immediately met and considered the effect of this order, and at its instance the board of directors unanimously authorized, at a special meeting, the following dispatch sent to President Cassatt, a copy being authorized to be forwarded to Mr. Kapp in this city:

"Mr. A. J. Cassatt, President Pennsylvania Railroad Company, Broad Street Station, Philadelphia, Pa.:

"The notice posted on Chamber of Commerce this day of an embargo on oats against Baltimore from all Western points on Pennsylvania Railroad lines has caused deep regret, also considerable feeling, being regarded as unwarranted under existing conditions, especially as the movement of oats this season is not likely to reach the normal, and the effect of an embargo so early will be felt throughout the entire crop year, resulting in serious loss of trade to this city, as also traffic for the railroad.

"The trade is disposed to submit to anything reasonable and assist your railroad in every manner possible to meet the limited facilities at this city, but the directors of the Baltimore Chamber of Commerce, in special session, earnestly protest against the present embargo and respectfully request that an order be immediately issued revoking the same.

"F. A. MEYER, President."

Then the members of 'Change met and roundly scored the Baltimore & Ohio Railroad for the inadequate elevator facilities at Camden station for the handling of local grain trade. Now comes the turn of the Pennsylvania Railroad.

Several days ago Mr. Kapp, in reiterating a promise about the increase in elevator facilities at Canton to the committee on terminals of the Chamber of Commerce, assured the grain dealers that the Pennsylvania Railroad had the best interests of the city of Baltimore at heart and would do everything in its power to increase the trade from this port. This, followed by the embargo, which practically means the absolute failure of the oat business at this port for the present season, has made the local grain men highly indignant. They stoutly declare that there is not the slightest occasion for it.

Pending an answer from President Cassatt, no further action can be taken, but the fighting spirit of the Chamber of Commerce has been aroused, and the members declare that they are now going to demand and fight for their rights.

MASSACHUSETTS

A strike of 'longshoremen interfered with the movement of freight carried by the Metropolitan and other steamship companies during September.

It is stated that the Enterprise Transportation Company, which has been operating a line of steamboats between Fall River and New York, has passed into the hands of the Du Pont Powder Company, of Wilmington, Del.

Fall River has finally granted a franchise allowing the Old Colony Street Railway Company the privilege of carrying baggage and light freight.

MISSISSIPPI

The Meridian Board of Trade and Cotton Exchange has now a thoroughly equipped Freight Rate and Claim Bureau, which is in charge of Melville Clinton Moore.

The Nachez Freight & Credit Bureau, Inc., this month will enter upon its third year of successful operation. H. E. Baxter is secretary.

On March 15 Laurel will get the benefit of Meridian rates from the East. Hattiesburg will also get better freight rates.

In an effort to secure a better classification of freights, the transportation committee of the Jackson Board of Trade has decided to establish a freight bureau, and a committee has been named by Chairman Campbell to perfect details. This committee is making an investigation of the freight bureaus of other cities, and will make every effort to make the local bureau one of the best in the South.

MISSOURI

The St. Louis Manufacturers' Association, through its committee on transportation and its executive council, recommends that the business interests of St. Louis should show preference to all railroads that have freight depots and facilities in St. Louis. The committee on transportation decided upon this action, and submitted the question to the executive council. At a meeting the executive council indorsed the plan offered by the committee on transportation. The members of the executive council of the St. Louis Manufacturers' Association are: L. D. Kingsland, J. A. J. Shultz, W. F. Nolker, M. G. Richmond, P. M. Hanson, A. D. Brown, E. Argo, A. H. Duncan, Anthony Ittner, C. A. Ekstromer, W. B. Becktold, W. J. McBride, H. W. Peters and Charles S. Brown. The members of the committee on transportation are: P. M. Hanson, Gus W. Jones, C. W. Mansur, H. F. Hafner, Gordon C. McNeil, P. D. McConnell, J. A. Lodwick and C. H. Morrill.

The meeting of the Missouri Valley Car Service Association resulted in concessions to hay and grain dealers. This was accomplished after the representatives of the different lines in the association had heard complaints from the dealers. The complaints concerned the revised rules published by the association September 1.

The association proposed a rule which required disposition orders on grain cars within twenty-four hours after the receipt of notice of the arrival of a car. This rule was revoked. Another rule reducing the time for unloading coal from seventy-two to twenty-four hours was not changed at the meeting.

NEBRASKA

General Freight Agent Spens, of the Burlington, brings from Chicago infor-

mation of vital importance to Omaha coal dealers and other shippers. Burlington officials suspended Thursday the new rules of the Western Car Service Association until October 15. Until that date the rules in effect prior to August 28 will continue in force.

The old rules of the Western Car Service Association provided that coal dealers and most shippers of goods should have five days in which to unload cars before demurrage charges of \$1 per car for each five days should begin. The new rules provided that the demurrage charges should accrue after forty-eight hours' notice of the placing of the car on unloading tracks.

Mr. Spens says that the new rule was suspended to give the Omaha people fair treatment and place them on an equality with the business men of Kansas City, where the new rule was suspended several days ago.

The Northwestern has notice of the suspension of the new rule until October 15. On that date the Western Car Service Association will hold a meeting and attempt to agree upon a plan that will be satisfactory to all.

General Agent Churchill, of the Great Western, has been advised that President Stickney will advise him to advocate the adoption of the Michigan plan. The Michigan plan is reciprocal. Forty-eight hours is the maximum limit for unloading a car. If a consignee can unload a car in less than this time he is given a credit, and if he takes more than forty-eight hours there is a charge for each additional hour.

The Great Western announced a new plan of handling freight. It has reduced depot storage charges from 5 cents to 1 cent per ton per day. The company does not enter the new field as a warehouse company, and consequently it does not insure the property. It simply holds the property in storage, subject to the risk of the owner. However, it is believed that the rule will be of great benefit to the business men. For instance, under the old plan, if an Omaha jobber received 100 tons of freight and wanted to hold it at the depot for a few days instead of carting it away to a warehouse, he paid storage at the rate of 5 cents per ton per day. Now he can leave it in storage at the rate of 1 cent per ton per day, which it is contended is a much lower price than the cartage would be, to say nothing of the storage.

Secretary A. F. Stryker, of the South Omaha Live Stock Exchange, has been notified by Milwaukee railroad officials that that road was about to inaugurate a new stock rate from the Dakota and Wyoming ranges to South Omaha and Chicago.

Cattle may be shipped from the district west of Chamberlain to South Omaha and then on to Chicago for an additional 5 cents per 100 pounds from South Omaha, inside of three days from the time they land in South Omaha.

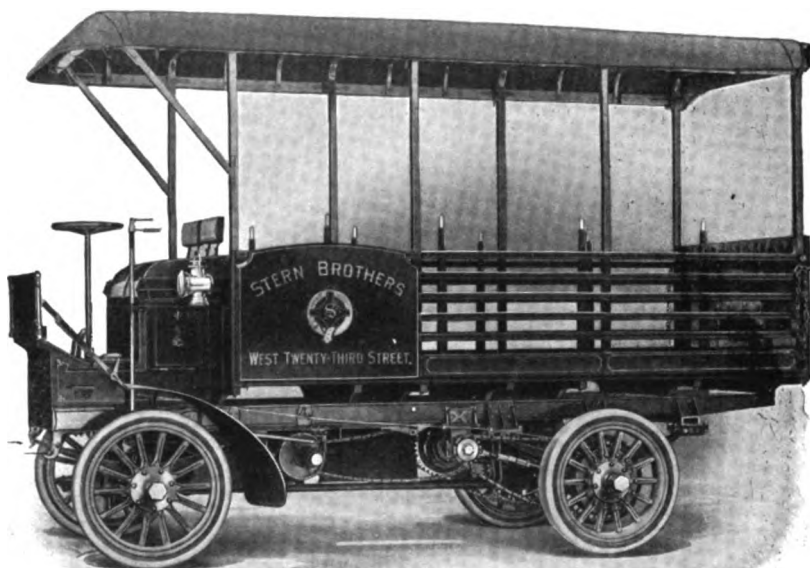
NEVADA

The first Western Pacific cars ever seen in Reno passed through that city a few days ago en route from the shops in the East to Boca. These cars will be run between Boca and Beckwith in carrying material for the new line.

Heretofore all material for the Western Pacific has been handled over the California-Oregon-Nevada Railroad, but this will be now switched onto the Boca and Loyaltan line and shipped to Beckwith.

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The appearance of the cars is proof that the Western Pacific is not only hurrying its line from Salt Lake to the Coast with all possible haste, but will have equipment ready for use when the line is built.

NEW HAMPSHIRE

President Tuttle, of the Boston & Maine, issued a letter a few days ago to George B. Leighton, Monadnock Farms, Monadnock, N. H., in which he said:

"A pamphlet, entitled 'The Boston & Maine as a Public Service Corporation in New Hampshire,' and bearing your signature, with date of August 20, 1906, has just been brought to my attention. It is so replete with erroneous statements and conclusions that its perusal leaves me somewhat in doubt whether its preparation is the result of ignorance of the facts with which it pretends to deal, or is a deliberate attempt to maliciously misrepresent and mislead." Mr. Tuttle then goes on to show in detail the errors in Mr. Leighton's pamphlet.

Although Winston Churchill was defeated in the Republican State Convention, an anti-railroad platform was adopted.

NEW JERSEY

Several Newark shippers have recently complained of inadequate freight service on the Pennsylvania road at River street.

The New Jersey Central is to spend \$1,000,000 for a freight station on the Bronx side of the Harlem River, east of Third avenue.

Counsel for the different railroads taxed in New Jersey appeared before the State Board of Equalization of Taxes and withdrew several hundred appeals against assessments made last year upon their second class property in New Jersey. These assessments were made under the so-called Duffield law providing for the taxation of this property at local rates. There was one petition not withdrawn. In that case the State Board dismissed the appeal, and this will provide a test case to carry the matter to the courts. The railroads claim that the second class properties were assessed at a higher percentage of true value than other properties, and that the Duffield law is unconstitutional.

NEW YORK

The management of the New York Central lines will spend about \$25,000,000 for new equipment. In all, it is expected that orders will be placed for 20,000 freight cars, 200 passenger cars and 400 engines. These should have values about as follows:

20,000 freight cars at \$800...	\$16,000,000
200 passenger cars at \$9,500...	1,900,000
400 locomotives at \$17,000...	6,800,000

Total \$24,700,000

John D. Lindsay and Albert H. Smith, lawyers, appeared before Judge Hough in the United States Circuit Court and pleaded not guilty to the indictments returned against the New York Central Railway Company, Nathan Guilford, vice president, and Frederick S. Pomeroy, general traffic manager of the system, charging all with violations of the anti-rebating act. Mr. Pomeroy was present in court and pleaded in person, but Mr. Smith filed affidavits showing that Vice-President Guilford was too ill to be in court and pleaded for him by virtue of a power of attorney which he filed with

the clerk. On motion of the defendants' counsel, Judge Hough, after consulting Assistant United States District Attorney Wise, who is to prosecute the cases on behalf of the Government, set the cases down for trial on October 15.

Notices have been received at the offices of the express companies in Utica to the effect that hereafter there will be no discrimination in favor of customers under the guise of special rates. Heretofore those who were large shippers were able to secure concessions. This, it is understood, is now forbidden.

Shippers representing nearly every town of importance in Western New York were present at the first annual meeting of the New York State Shippers' Association. The chief business transacted was the election of the board of directors for the ensuing year. They are: F. G. Ferrin, Rochester; L. G. Loomis, Victor; B. H. Bean, Buffalo; Charles Strong, East Rush; Hyatt C. Hatch, Atlanta; W. H. Clark, Cohocton, and D. W. Shults, Avoca.

The object of the association is the mutual protection of its members, the securing of just treatment from transportation companies, inciting its members to better loading and more careful grading or assorting of produce, encouraging the planting or sowing of better seeds, protection against unscrupulous receivers—in short, the bettering of the general conditions of the produce trade for farmer, shipper and receiver.

NORTH CAROLINA

The Asheville (N. C.) *Citizen* in a recent issue contained a report of a meeting of the Asheville Board of Trade, from which the following is taken:

"No one contemplating establishing a factory or commercial enterprise in Western North Carolina need be deterred by fear of insufficient railway service hereafter. The actual development of many large enterprises and the experience of local shippers is proof of the hearty co-operation of the Southern in the upbuilding of the section. The railway officials have shown on recent numerous occasions every disposition to assist Asheville and Western North Carolina to handle its rapidly increasing trade. Following the erection of the handsome new passenger depot, the company has begun to lay twenty miles of side tracks and has purchased a considerable tract of land on which to expand their yard facilities at Asheville. Recently the Southern system brought over 100 new locomotives, and is taking steps to further increase its motive power.

Notwithstanding the efforts of the Southern Railway officials to relieve the freight congestion at Asheville, the situation at the freight depot continues troublesome.

Managers of local offices of the Southern Express Company throughout the State have received notices to the effect that the new railroad rate law has the effect of prohibiting the use of express franks or free transportation of any kind except for officers and employees of common carriers, and special rates for certain charitable institutions. This applies especially to interstate shipments, and there is also a law against discrimination. It is held by the general counsel for the express companies that it would be a discrimination to allow the use of franks in intrastate shipments. All free transportation is, therefore, annulled.

OHIO

In the organization of the Forest City Freight Bureau, of Cleveland, J. F. Egan, formerly with the Rock Island and the Missouri Pacific, has been appointed chief clerk in charge of the rate and claim departments, and C. L. Sisson chief clerk in charge of the accounting department.

B. N. Austin, general passenger agent of the Baltimore & Ohio, is promulgating through the Central Passenger Association notice that he proposes to issue new tariffs at once, including the Ohio 2 cents a mile rate in the interstate fares, using short mileage for lasing point purposes and a straight combination of locals.

He announces further that he proposes to exact for the Baltimore & Ohio a full measure of the differential privilege awarded that road. In every respect except the latter the action of the B. & O. is considered to be what the railroads ultimately will decide upon.

The differential portion of the announcement causes considerable surprise among railroad men, and it is a question whether that part of Mr. Austin's action will stand. The other lines make the announcement that they are going to meet the lowest rate made by any differential railroad. This is the position of the Nickel Plate.

OREGON

The North Pacific Steamship Company's fleet will discharge and receive freight at the Martin Dock, Portland, Ore., hereafter.

The O. R. & N. company have just published a circular containing instructions to agents and shippers in regard to loading cars. This is done with a view to getting the best service possible out of the equipment. The new rules are as follows:

All cars must be loaded to their utmost carrying capacity and never above maximum limit given below. The following limits will be allowed:

Cars with marked capacity of less than 40,000 pounds, 1,000 pounds above capacity. Oregon Short Line cars with marked capacity of 40,000, 1,500 pounds above capacity.

Maximum loading for all other cars will be 10 per cent. above marked capacity of car.

Cars not marked will be considered 30,000 pounds capacity.

Former rules provided for equipment above 30,000 pounds capacity to be loaded 10 per cent. in excess of marked capacity.

On all shipments of freight in less than carload quantities remaining in warehouses of this company awaiting delivery to consignees, the storage will be, after ten days from date of arrival, at rate of 5 cents per 100 pounds, for each succeeding thirty days or fraction thereof. Minimum charge, 25 cents.

The company reserves the right at expiration of ten days after arrival to place the goods with any storage or warehouse company subject to risk and expense of the shipper or consignee.

PENNSYLVANIA

Coal producers in the Pittsburgh district are suffering from a car shortage.

The Pennsylvania Railroad is creating at Hollidaysburg, near Altoona, the largest freight yards on its system. There will be, when completed, 100 miles of tracks and the cost will be above \$3,000,000. The property was purchased for \$500,000. Fast and perishable freight

will continue to be handled at Altoona. Hollidaysburg will handle all the remainder.

It is stated that through Commissioner General of Immigration Frank P. Sargent the National Government will join with the city and State authorities in forcing the Pennsylvania Railroad to either improve the wharf facilities which it leases along the Delaware River or else surrender its privileges so that the Government may provide proper facilities for the steamer traffic at this port.

Circulars announcing changes in the car service methods, brought about by the new interstate commerce law, are being sent out by the Pittsburg Car Service Association and other railroad organizations of that character all over the country. The changes were decided upon at a meeting held in Philadelphia, at which the local organization was represented by Commissioner W. M. Prail. Copies of the circular will be filed as required by the new law at all points where freight is shipped or received.

The Pennsylvania Railroad has decided to give up its lease of the Christian street pier, at Philadelphia, which does not expire until 1911. The pier is wanted for a breathing spot by downtown residents.

Harbor Master James Pollock recently sent a second warning to officials of the Pennsylvania Railroad, demanding in no uncertain terms that the corporation take immediate steps to improve the dangerous condition of a number of its wharves along the Delaware River, calling particular attention to Pier No. 19, North wharves, which has recently been greatly complained of by persons forced to make use of it.

SOUTH CAROLINA

The North German Lloyd has had under consideration the establishment of a new line or new lines of steamers between Bremen and the Southern States. Plans have now been completed to dispatch a passenger steamer for an experimental trip about the middle of October from Bremen via Baltimore to Charleston, S. C., and Savannah, Ga. The result of this trip will determine the permanence of the new lines to be undertaken.

TENNESSEE

The vigorous movement inaugurated by the Lumbermen's Club of Memphis, and ably seconded by the Lumber Exchange of St. Louis, Lumber Exchange of Buffalo, and various other lumber organizations, in favor of rescinding the new minimum weight ruling of the Missouri Pacific system, has resulted in a decided victory for lumber interests generally, as the Missouri Pacific has given official notice that it has ordered the restoration, effective October 1, of the old basis of 30,000 pounds.

An application for a charter was filed recently in the register's office by the Patton-Tully Transportation Company, a new concern just organized in St. Louis to enter into the river trade. The company is capitalized at \$100,000, and will carry on a general towing, freight and passenger business on the Mississippi River.

The incorporators are L. E. Patton, C. J. Tully, C. E. Patton, S. B. Anderson and H. B. Anderson.

The Memphis Freight Bureau sent a committee, consisting of E. W. Porter, T. J. Keyer, H. M. Neely, Jr., and James S. Davant to represent the cotton in-

terests of Memphis at the hearing before the Interstate Commerce Commission, at Washington, to protest against the enforcement of the thirty-day clause in the new rate law.

TEXAS

The congestion of grain shipments north of Fort Worth has been somewhat relieved.

Judge Samuel H. Cowan, of Fort Worth, will undoubtedly be appointed special counsel for the State in the suits of the several railroads against the railroad commission. The whole list of freight rates established by that body and the reduced passenger fare as applied to the Houston & Texas Central, are pending in the Federal court here at the present time.

Judge Cowan has a national reputation as an expert on railroad rate matters. He has appeared before the Interstate Commerce Commission on numerous occasions as the attorney for the Texas Cattle Raisers' Association. He had a great deal to do with the drafting of the new rate law as well as of the meat inspection law.

The Houston Post says: "Incidentally it may be stated that Judge Cowan is said to be slated for appointment to a position on the Interstate Commerce Commission. The appointment, however, will probably not be made until some time next year."

The jobbers of Waco, complaining of slow deliveries and retarded transfers, are contemplating the organization of an association to keep tab on freight matters with a competent man in charge.

UTAH

Announcement was made of a reduction in railroad rates to all Utah points on shipments from the Missouri River. These rates are made to conform, practically, to rates now in effect to Butte, the Montana city having heretofore profited by a more favorable rate. The new schedules are to go into effect in thirty days.

"Circular No. 8," promulgated by the Utah Car Service Association, which proposed a reduction from four to two days in the free time heretofore allowed on coal, ore and other commodities, was the subject of an important meeting and discussion at Oregon Short Line headquarters, at which the representatives of the smelting and sampling industries presented their side of the case, and it was gathered from various sources after the meeting that there will in all likelihood be at least some modification of the obnoxious edict.

VIRGINIA

The subject of better accommodations for passenger and freight traffic came up at a special meeting of the Business Men's Association at Harrisonburg, Va., recently, and after many prominent mer-

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chants and other tradesmen of the city had given their views and lodged complaints Supt. J. E. Spurrier, of the Shenandoah Valley Division of the Baltimore & Ohio Railroad, offered to recommend the erection of a new station, if the demands were within reason, while Division Supt. Lake, of the Southern Railway, which also enters Harrisonburg, promised better service. The accommodations at that point, which is almost identical to all the important junction stations in the Shenandoah Valley, were seen a few days ago by Judge Beverley Crump, chairman of the Virginia corporation commission, who was returning from a rest at Rawley Springs, and he compared them to barbarian methods, and promised that the valley of Virginia should have better transportation facilities. The corporation commission is clothed with great powers.

No more freight will be hauled through the city by the Norfolk & Atlantic Terminal Company. This is in accordance with a recent city charter. It does not apply, however, to carload shipments received for the company at the intersection of the road with the Norfolk & Western.

The Southern Railway, having completed a shed at Lynchburg for the reception of outgoing freight shipments, is now engaged in filling the yard in the rear of its freight warehouse for yard purposes, which, when completed, will give the system by far the best facilities for handling its heavy freight business that it has ever had in Lynchburg.

The freight rate and classification hearing before the Virginia State Corporation Commission was resumed September 11. The hearing is described as becoming somewhat monotonous.

WASHINGTON

There is a continual congestion of freight in the Northern Pacific yards at Spokane owing to the lack of power to handle the business.

President Goodall, of the Spokane Chamber of Commerce, says he feels sure that the citizens of that city will subscribe \$100,000 for the fight which is to be made before the Interstate Commerce Commission for a reduction and equalization of through freight rates from the East to Spokane.

Counsel for the Great Northern and the Northern Pacific have served Attorney General Atkinson, as representative of the State and State Railway Commission, with copies of cross complaints and notice of intention to ask an injunction. The two Northern roads intervene in the action brought recently before Judge Hanford in the Federal court to enjoin the railway commission from enforcing its recent joint rate orders respecting wheat, etc.

That action was brought originally by the Oregon Railroad and Navigation Company alone. The notice filed contains the announcement that application will be made before Judge Hanford September 8, for temporary injunctions.

Incident to the cross-complaint the Hill companies contend the railway commission law is unconstitutional and void, and that the commission, even under the law, had no power to order the joint rates, claiming that no evidence had been introduced at the Colfax hearing to show injury to any specific shipper, as the law requires.

The Northern companies contend they are operating roads which compete with

the O. R. & N. and that the rate will make some of their now prosperous branch lines unproductive of revenue.

The Washington State Railroad Commission has decided to examine into the alleged car shortage and minimum weight difficulties complained of by lumbermen, and has caused to be sent out a circular letter with a list of fourteen questions which the millmen are requested to answer and return to C. A. Snowden, secretary. The letter is confidential.

WISCONSIN

The Wisconsin Railway Commission has rendered a decision concerning grain rates to Milwaukee that meant a loss on freight of \$750,000 a year. Now cheese must be shipped cheaper, and as this is one of the leading industries of the State it also means a big slice out of the profits of the railroads. The decision not only applies to shipments of cheese but to other products of the cheese-maker as well and material shipped to him and used in the manufacture of cheese. A general reduction is ordered on cheese, paper, lead foil, whey and butter.

A ruling of importance to La Crosse grain merchants has been made by the railroads in southern Minnesota, in order to compete with the roads in the northern part of the State. The Great Northern, the Northern Pacific and the "Soo" voluntarily made a reduction of 10 per cent. in the freight rates on grain. The Omaha, Northwestern & Milwaukee roads have filed applications asking permission to make a like reduction.

PERSONAL MENTION

ASKEW.—H. G. Askew, formerly auditor of the Texas Railroad Commission, has become chief statistician for the General Managers' Association of Texas Railroads.

DUNLAP.—C. K. Dunlap has become traffic manager of the Sunset Central lines.

FENTON.—A. M. Fenton has been made district freight and passenger agent of the Omaha, at Duluth.

GILHAM.—C. F. Gilham has assumed his duties as transcontinental freight inspector at Walla Walla.

GORDON.—John P. Gordon has been appointed general agent of the freight department of the Duluth, South Shore & Atlantic road, in Duluth.

JONES.—Harry A. Jones has been appointed freight traffic manager of the Pacific system of the Southern Pacific at San Francisco.

KEALHOFFER.—H. S. Kealhofer has accepted the management of the Montgomery (Ala.) Freight Bureau.

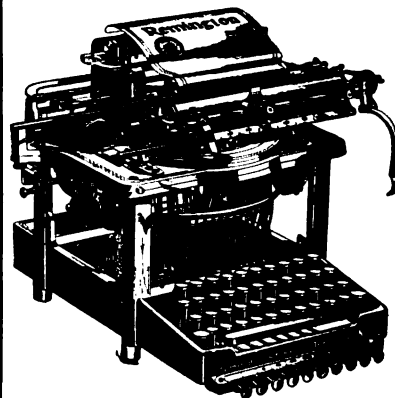
MILLS.—Frederick S. Mills has been promoted to contracting freight agent of the Lackawanna road, with headquarters at 429 Broadway, New York.

PEARCE.—Hiram M. Pearce has become freight traffic manager of the Chicago, St. Paul, Minneapolis & Omaha Railroad.

WILCOX.—E. T. Wilcox has been appointed general freight agent of the Birmingham belt, the terminal properties of the 'Frisco in the Birmingham district.

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HEARINGS AND RULINGS BEFORE STATE COMMISSIONS

ALABAMA

President Comer, of the railroad commission, who has been nominated for Governor by the Democrats of the State, at a recent meeting of the commission, made it clear that he is in favor of a system by which the short lines in the State shall base their tariffs. Mr. Comer says he is not fighting any interests, corporate or otherwise. He also says that the Constitution of the Federal and State governments guarantees protection to the railroads, and provides absolute safety to them against unreasonable reductions in rates.

ARKANSAS

At a meeting of the railroad commission in Little Rock, on September 12, the following rulings were handed down by the commission, through secretary W. E. Floyd:

Effective September 22, 1906: Petroleum (including crude petroleum), and the following oil products having petroleum base: Benzine, benzole, carbon, gasoline, grease, lubricating oils, naphtha, miner's oil, petroleum hard oil (miner's sunshine), petroleum floor oil, petroleum oil residuum, wool oil, transil oil, petroleum harness oil and compound lubricating oils, straight or mixed. On single line hauls one half of present tariff rates. In making joint rates over two lines apply 5 cents differential on carloads and 6 cents on less than carloads. For three or more lines apply sum of locals less 10 per cent. Maximum rates shall be in accordance with Rule 2, page 21, and Rule 4, page 22, of Standard Freight Distance Tariff.

Machinery, less carloads, old or second hand, shipped to points at which a foundry or machine shop is located, one-half of present tariff rates.

Effective September 22, 1906: Add following rule: When a shipper at any point where there are track scales receives a car loaded with any commodity which is believed to have been incorrectly weighed, it shall be the duty of the railroad company delivering the car to reweigh same free of charge, when requested to do so; provided that if no error in weight is found the shippers shall pay \$2 to defray the expense of reweighing; provided further, that if the discrepancy shown by the reweight is less than 500 pounds either way the original weight shall be regarded as correct.

Effective September 22, 1906: Add following rule: At points in this State where no switch engine is kept it shall be the duty of the railroad company to place all cars which are to be unloaded on the private sidetrack of the consignee or on the public side track, as the shipper may elect, accessible for unloading before the train delivering the car shall leave the town or place of delivery; provided, that when this is impracticable the car must be placed by the next local freight train passing said point in either direction.

W. E. FLOYD, Secretary.

By order of the Commission,

Little Rock, Ark., September 12, 1906.

FLORIDA

The Jacksonville Board of Trade has protested to the Florida State Railroad Commission against the advance by the Seaboard Air Line in storage and wharfage charges on lumber in this port, and the notice of the Atlantic Coast Line and

St. Johns River Terminal Company, that the shippers will have to lease space on their docks for a stated time at a minimum of 1 cent per square foot per month.

The fight of the Jacksonville lumbermen against the increased wharfage rates imposed by the Seaboard Air Line Railway Company has been taken up by the railroad commissioners.

GEORGIA

Secretary George F. Montgomery, of the commission, has issued the following formal notice of the meeting and the hearing:

September 18, 1906.

To Whom it May Concern:

The railroad commission has held that its penalty demurrage rules do not apply to delays caused in the transfer or switching of cars after the car has been tendered and accepted by the consignee named in the bill of lading; or in other words, after the contract named in the bill of lading had been completed. The commission will, at its meeting on October 4, however, consider the question as to whether or not its authority has been so increased by the provisions of the Steed bill, passed at the session of the Legislature in 1905, as to give it legal authority to require the switching of cars, to provide a reasonable rate of charges therefor, and to apply penalty rules for delays, etc., and at the time above indicated the commission will be pleased to have any person interested in this question to appear and present his views upon this subject.

By order of the board.

GEORGE F. MONTGOMERY.

The State Railroad Commission dismissed the petition of the Georgia Retail Marble Dealers' Association, J. B. Roberts, president, which asked for a reduction of the intrastate rates on marble products.

The action was taken by the commission upon the grounds that the hearing of the petition had been postponed three times upon the request of the complainants, and that when the hearing was called, having been peremptorily set for that date, none of the petitioners appeared before the board and also failed to send any communication.

Harry T. Moore, traffic manager of the Atlanta Freight Bureau, is being backed by that organization for railroad commissioner, to succeed Joseph M. Brown. J. Pope Brown has announced that he will not be a candidate for the position.

INDIANA

Forty-one railroad companies operating in Indiana and comprising practically all the railroads in the State were made defendants to a petition filed with the State Railroad Commission by the National and Tiona Refining companies and the Evansville Oil Company.

The complainants assert that they are engaged in shipping petroleum oil and its products, and that they transport over the lines of the defendant companies, that the railroads recently changed their tariff sheets on petroleum products and made the rate higher than is charged for other similar shipments, that an exception to these rates was made in favor of the refinery at Whiting, which is owned by the Standard, and that the discrimination works great hardship to the complainants.

The complainants charge that the ex-

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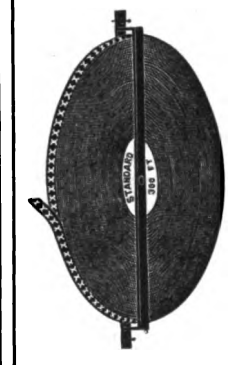
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cessively high rates are all in favor of the Standard, and that they are unable to compete with it because of these discriminations.

IOWA

The State Railroad Commission has been asked to adjudicate a very important drainage ditch controversy between the supervisors of Webster and Pocahontas counties and the Northwestern Railroad.

Joint ditch districts affecting the drainage systems of these counties are involved, the question pending being as to the crossing of the Northwestern right of way. The engineers of the ditch, acting for the counties, and the engineers of the railroad are unable to agree upon the place and manner in which the ditch shall be carried across the road's right of way.

KANSAS

The order of the Board of Railroad Commissioners recommending that jobbers' rates be established in Clay Center has been issued. The order restricts the rates to foundry products and brooms. The board notified the railroads that unless the jobbers' rate were granted within thirty days the board would take up the question of removing the discriminations against Clay Center by other towns which have jobbers' rates, which may mean the removal of all jobbers' rates in the State.

KENTUCKY

Chairman C. C. McCord, of the Kentucky Railroad Commission, has issued a circular letter to all shippers in Kentucky advising them to preserve all of their freight bills with a view to recovering on them in the event the suit pending between the commission and the railroads is decided, sustaining the rates made by the railroad commission.

Preparation is being made by the commission for a vigorous defense in the suits brought by local roads to permanently enjoin the commission from enforcing its order reducing rates on freight in this State, made June 19 last.

The Federal Court has granted a temporary restraining order, and at its next session will be asked by the roads to grant a permanent injunction against the commission. It is claimed by the railroads that the new rates amount to a confiscation of property. This the commission maintains cannot be proven, the rates having been made only after long and careful consideration.

Many shippers throughout the State are complaining of the refusal of the roads to obey the order, and are eager to know whether, in case the Federal court sustains the commission, it will be possible to recover the difference in rates charged since the order was promulgated. The commission advises shippers to retain all freight bills and receipts for freight in order that claims may be made and recovery obtained providing a favorable verdict is given.

MINNESOTA

The Railroad and Warehouse Commission, early in September, shut off hearings and arguments as to the reasonableness of the proposed schedule of merchandise rates. The hearing had been in progress since March 27. The investigation was begun by the commission under a resolution of the last Legislature directing the commissioners to inquire into the reasonableness of rates for the purpose of securing a readjust-

ment of freight rates in Minnesota throughout the State and a uniform scale of percentages which each class shall bear to the first class, the readjustment to secure substantial reduction in the existing merchandise rates.

But the opposition to the schedules did not come only from the railroads, but from the shippers of a number of cities. Both Winona and Duluth were represented at the hearings, opposing the proposed schedule.

A week later, Duluth shippers sent the following petition to the Governor, through Mayor M. B. Cullum:

"We, the undersigned jobbers and manufacturers of the city of Duluth, take the liberty of addressing you relative to the proposed change in railway rates between points in the State of Minnesota now under consideration by the Railway and Warehouse Commission.

"Believing, as we do, that you, as the Governor of this great State and a business man of experience and judgment, would not knowingly or wittingly be in accord with any scheme or manipulation that would upset and disturb the business interests of the whole State without giving such business interests careful consideration, therefore, we, the undersigned wholesalers, jobbers and manufacturers of the city of Duluth, desire to file a vigorous protest with you against the establishment of the proposed mileage rate basis, and give you as a basis of our protest the following reasons:

"First—We desire to call your attention to the fact that the present railway class rates from the various jobbing points in this State to other points within the State have been established and adjusted in accordance with business necessities, and this basis has been reached after many years of business experience and numerous readjustments. You or any other business man must certainly realize that a radical change in the method of adjusting rates will be actually perilous to certain business interests. It must be remembered that certain jobbers have built up and adjusted their business to accord with present conditions, and while a percentage reduction in rates would not affect these interests and would be welcomed by them and the whole people in general, any adjustment such as is proposed would appear to us as not only unwise and unbusinesslike, but extremely hazardous.

"Second—The readjustment of railway rates on a strictly mileage basis must necessarily retard State development, which question is now one of the most important before the people of this great State. It means to the people of the northern part of the State, off in outlying districts, that they must pay tribute to railroad companies for every crook and curve in the tracks of said companies.

"It means that people living in these outlying districts will be at a disadvantage relatively in comparison with the people living near the larger railway centers, and will have a tendency to check the development of large territory, which we are so much in need of.

"It means cutting off competition and the building up of trusts in certain lines in the large cities.

"It means that in certain districts where freight rates are now adjusted to allow jobbers and manufacturers of the Twin Cities, Duluth and other points to compete for business on an equal basis, that this will all be cut off and that all

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lines of business conducted in such locations will be subject to exacting conditions and rules set down by the nearest jobbing point. This certainly will make higher prices on everything for people in that country.

"Third—Under the new condition as proposed, or as we understand it, railway companies will not find it obligatory to adhere to their present rates where they are lower under the existing rates, but will be privileged to raise said rates to conform with the new, or mileage, basis. You are perhaps well enough informed to realize that a railway company does not give anything away, unless it is obliged to; therefore, where the rates between heavy shipping points or terminals are now adjusted to fit business conditions, we shall meet with a radical change. Under the basis proposed present rates, which have been made low to meet heavy shipping and business conditions, could be, at the option of the railroad companies, raised very materially, or to the maximum.

"Fourth—The State of Minnesota accomplished a great thing for its people when it frustrated the merger of the Great Northern and Northern Pacific railroads, which merger would have tended to cut off competition.

"By adopting the mileage basis for rates there will be a large number of towns where two systems of railroads cross that will have no competition in transportation facilities to market. For instance, take the town of Bemidji, where the Minnesota & International and the Great Northern railways cross. The class rates heretofore from the larger jobbing centers in Minnesota have been practically the same over both roads, allowing the inhabitants of this town to enjoy competitive rates. Under the proposed arrangement unless the Minnesota & International desires to sacrifice 100 miles or more of local territory between Bemidji and terminal points they cannot afford to meet the rate to this point made by the Great Northern railway.

"There are a number of other towns in the same situation. Among them might be mentioned Wadena, Detroit, Fergus Falls, Crookston, Granite Falls, St. Cloud, Sauk Center, Glenwood, Alexandria, Morris and many others.

"We have endeavored to show you that certain business interests, not only in this city, but in other cities, will be placed in a most perilous and hazardous position. Their trade, that has cost a vast amount of money to build up, will be reduced and taken away from them. We feel, therefore, in view of the facts above stated that any basis of rates that will disturb business conditions would be ill advised and a cause for great alarm to the best institutions of our State, and we hereby protest in the most vigorous manner against the action of the Railway and Warehouse Commission in adopting a mileage basis from terminal points.

"We do not wish to be understood as protesting against a reduction in class rates in general, provided said reduction is made upon lines that will preserve the present relative positions of the business interests that we mention.

"You can do much for us in this matter, and we look to you and beseech you to aid us in securing a rehearing before the Railway and Warehouse Commission.

"In conclusion, we trust this matter of such vital interest will receive your very early consideration, and we sign ourselves."

MISSISSIPPI

The railroad commission has received a letter from C. C. Cameron, general freight agent of the Illinois Central, suggesting that the Mississippi freight classification be canceled and the Southern classification substituted in lieu thereof. He said that this suggestion is made in order to bring about uniformity in freight tariffs and minimize the number of complaints received by the commission. Mr. Cameron submitted statistics showing that from 1901 to 1905, inclusive, the Illinois Central had granted 539 freight rate reductions and made eighty-four rate advances in Mississippi. The suggestion will be considered at tomorrow's session.

A petition from citizens of Phillip City has been filed protesting against the proposed change in schedule on the Yazoo & Mississippi Valley road, for which the business men of Yazoo City have petitioned, canceling the close connections between the Yazoo and Mississippi Valley road and the Southern Railway at Moorhead.

C. H. Faulkner, of Sardis, complains that he is unable to obtain a sufficient number of cars from the Sardis & Delta road to handle his shipments of logs.

The citizens of Forest have filed a petition asking that the Alabama & Vicksburg road be required to provide more adequate facilities for handling freight traffic at that point.

A case of unusual interest to be tried during the first week of the Hinds County Circuit Court term in September is that of the Laurel Cotton Mills vs. the Gulf & Ship Island road, in which the plaintiffs seek to enforce a freight rate contract duly entered into with the railroad company when the mills were established at Laurel and which was canceled a year or so later by the railroad company.

It is alleged by the Laurel Cotton Mills that the contract rates were granted in order to enable the mills to compete with the Stonewall Cotton Mills, one of the largest plants in the State, and since the withdrawal of the rates competition has been rendered impossible. In defense the railroad company contends that the rates granted were unlawful and that they were canceled immediately after being apprised of this fact.

OHIO

The Ohio Railway Commission forwarded a protest to the Interstate Commerce Commission against the proposed rule to permit the railroads to change commodity rates on ten days' notice.

The Ohio commission says the rule would tend to unsettle rates and open the way to discrimination. The Ohio commission has decided that all tariffs must be filed by January 1, 1907.

A preliminary draft of the call for railroads to file tariff sheets has been prepared by the Ohio Railroad Commission. While the date by which the sheets must be in the hands of the commission has not been definitely settled, it probably will be about December 1. At the recent conference with freight traffic representatives of the railroads, they asked to be given until January 1. Their reason was that rate clerks are now overworked.

SOUTH DAKOTA

William H. Stanley, secretary of the State Board of Railroad Commissioners, has taken up the work of preparing his annual report, which must be submitted to the next Legislature and be printed

and ready for distribution before the Legislature convenes. Secretary Stanley reports that the work of his office is steadily increasing and that the work of the commissioners also is becoming larger year by year.

The railroad commissioners have met with good success in the adjustment of complaints filed with the board that when any one has a grievance, no matter how trivial, the board is called upon to take hold of the matter and adjust it.

TEXAS

The commission has granted authority for the addition of the rate of 75 cents per ton for the transportation of rock asphalt, in carloads, minimum weight marked capacity of car used, from Fort Worth to Dallas, effective September 15, 1906. Expires March 15, 1907.

In accordance with a promise given the Hempstead organization at a conference here between the Business League, of Hempstead, and a representative of the freight department of the Houston & Texas Central Railroad, that company will at the next meeting of the commission make application for permission to reduce the cotton rate between this place and Houston from 21 to 15 cents. The company retains the proviso not effecting the rate west and south of Hempstead. This concession is the result of an earnest effort the Business League has put forth for some time to secure the cheaper rate.

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Demand for American Goods in Foreign Markets

(These reports are collected from a number of sources, all of which are believed to be thoroughly reliable.)

Consular reports indicate that American made motor cars can be introduced to advantage in Brazil and South Africa.

There is a demand for yellow pine lumber in Barcelona.

It is believed that refrigerators, washing machines and other modern American articles can be introduced in France to advantage. The common household refrigerator so universally used in the United States is unknown in France. Only the very wealthy families can afford the expensive refrigerators to be had. It is the same with water filters—the plain people do not use them. Washing machines and clothes wringers, such as are in common use in the United States, are not known there. In fact, the conditions do not seem to be favorable for their introduction. The family wash in France is done away from the home, at one of the lavoirs publiques provided in every town and city.

One of these establishments is owned by the City of Rheims and there are others conducted by individuals. The lavoir municipal accommodates about 300 washerwomen at one time, and the others from 20 to 50 each. Each woman has a stall, which is rented, including water, at 5 centimes, or 1 cent per hour. Here she lays the garments on a piece of wood, beats them with a club, the same as did the washerwoman of a century ago. In some cases she may scrub the clothes with an ordinary scrub brush, using soap. Some of the municipal establishments have large machines for washing and for drying, for which they charge the washerwomen a nominal price by the piece. They are run by steam or electric power, but are in use only in the larger cities. A revolution in laundry methods must take place before there can be a market in France for our washing machines.

The construction of a series of public works at Vladivostok, involving an expenditure of about \$6,000,000, opens an opportunity to American enterprise. Among these public improvements the most urgent are: (1) Water works, (2) sewerage system, (3) an electric street railway and an electric lighting system, (4) building of wharves and warehouses on the Golden Horn Bay, (5) the construction of a small harbor for coasting vessels on the Amur Bay near the mar-

ket, (6) the building of markets, (7) the paving of the streets.

The city also wishes to erect a large building or series of buildings on the ground now occupied by the city garden, the basements to be used for storage of merchandise, the rear being right on the wharves, and the other floors for offices, parts to be set aside for an exchange or chamber of commerce, for municipal offices, for the municipal bank and library, and for a theater and club.

The erection of buildings for cheap lodgings is also planned. Rents are now so high that an unfurnished apartment of five rooms, for instance, even at some distance from the business center, cannot be secured for less than \$100 month. A steam bakery, steam laundry, a public bath house, a slaughter house, and small electric ferries on the bay are among the improvements proposed. More hospitals, schools and gardens, boulevards, places for sea bathing, etc., are desired. An addition of \$250,000 is needed for the capital stock of the municipal bank and for a Mont de Piété or municipal pawnshop.

Quito, Ecuador, intends to spend \$500,000 for water works.

Electroplated silverware, it is believed, will find a ready market in Vera Cruz and adjacent points in Mexico.

A contract has been signed between three of the leading oil companies of California, viz., Union Oil Company, of Los Angeles; Associated Oil Company, of San Francisco, and Graciosa Oil Company, of California, and the Toyo Kisen Kaisha (Oriental Steamship Company), of Japan, for the delivery of 500,000 barrels of crude oil per annum for ten years. It is understood that this oil is to be used as fuel for various Japanese steamers. It is further intimated that still greater oil transactions have been inaugurated by Mr. Henry Crocker, of California, in connection with prominent Japanese and with the Graciosa Oil Company. As a result it is expected that three large refineries will be erected in Japan, one at Yokohama, one at Kobe, and another at Moji. The new tariff gives a 20 per cent duty on crude oil and a duty on refined oil of about 40 per cent. This difference in duty between the crude and refined oil, together with the market advantages for the by-products, makes a very comfortable working margin for the refineries located in Japan.

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State Railroad Commissions and the Courts

BY W. M. BARROW

Secretary Railroad Commission of Louisiana

THE earliest efforts to regulate the charges made by railroad companies for the transportation of freight and passengers grew out of the realization on the part of the public of an obligation which was due in return for certain rights and privileges granted them, and became intensified in the Granger movement of 1870-71 to such an extent that State commissions, having various powers and duties, were rapidly created by many State Legislatures.

State Control

The idea of State control seems to have been coeval with the birth of railroad transportation, and dates far beyond the Granger cases, although the early plan was crude and soon proved to be impracticable. The primal idea seems to have been that the charters granted by legislative authority should stipulate the rates, fares and charges which were to be collected by the railroad companies, apparently basing the rates upon the flimsy foundation of the amount of capital stock authorized, with no regard for the fluctuating expenditures for operating and general expenses, and without consideration of the important elements of renewals and betterments. The charges seem to have been arranged to suit the localities in which the railroads operated, and made no distinction between carload quantities and parcel freight. The space occupied formed an important item in the charge to be made, and in this we see the evidences of evolution from the old canal system, which in turn borrowed the plan from the vessels of the early days of transportation.

Impracticable Ideas

The development of traffic gradually proved the impracticability of first ideas, and crude forms of classifications began to appear, which, in some measure, simplified the question of valuation of freights; but, at the same time, complicated the question of freight charges to such an extent that the average shipper was at sea when he came to determining the proper rating for each class of his freight. The connecting of the distant parts of the country by continuous lines gave rise to new conditions which were unforeseen and unprovided for, and it was soon learned that the

volume of traffic in the East was far heavier than it was in the West and South. The average haul was also much shorter in the East, not more than half of what it was in the Southern section of the country, and this distance increased as the railroads approached the thinly settled districts of the Western prairies. The railroads met the conditions by arranging three distinct classifications for the territory divided by the Ohio and Mississippi rivers. Discriminations in rates and practices followed the advent of classifications—at least they became more easily discovered as the traffic grew in volume, and through rates having been protected by "pooling" agreements, the attention of the freight agents was directed to local traffic, from which the most abundant and profitable revenues were to be derived. Upon local freights the shippers were quicker to discover extortions and discriminations, and the idea of State control became an issue with them long before national control was suggested and put into effect.

The Illinois Commission

The history of the Granger cases is familiar to all who have watched the great reform movement which followed the agitation among the farmers for improvements in their farms and homes. The movement bore so directly upon State legislation that it may fairly be regarded as the beginning of the sentiment which has caused thirty-six States to organize railroad commissions with more or less power to regulate freight rates, and which has brought from Congress the act which gives the Interstate Commerce Commission power to fix reasonable rates.

This movement began among the sturdy farmers of the West, who found many causes for complaint against the management of railroads, upon which they were dependent for the movement of their crops to market, and the hauling back of their supplies to the farms. The Grangers were organized to make farmers' homes more attractive, and, at the same time, to render farms more productive, reducing the cost of production by the introduction of scientific and economic methods.

An important incident in their avowed purpose of

organization was the cost of transportation, and thus they became the popular agitators of railroad control by the State and National Governments. Rapidly the sentiment spread, and their first results were obtained in Illinois in 1871.*

A prominent judge declared the law unconstitutional, and lost his seat on the bench as a result of his decision. In 1873 the Legislature passed a second act avoiding any reference to the rates themselves; but it declared that the rates should be reasonable, and it provided for a commission whose duty it was to fix reasonable and just rates. Thus the Grangers triumphed, and set to work those forces and influences which have resulted in the organization of railroad commissions in the majority of the States.

Development of State Commissions

The eminent statistician of the Interstate Commerce Commission, Prof. Henry C. Adams, in a stupendous work upon railroad statistics in the United States, has devoted several volumes to the work of State railroad commissions, and in this splendid review of the powers and duties of such commissions he has made a division of them into "strong" and "weak" commissions, placing in the first of these classes all State commissions having the power to fix reasonable rates, and in the latter class those which do not possess the rate making power.

The development of State railroad commissions has been marked by an increasing tendency on the part of Legislatures to give to these bodies complete control over rates, not only of railroads, but extending this power to all of the transportation companies, delegating to the commissions the execution of the legislative will. The chief justice of the Supreme Court of Louisiana has very clearly set forth the consensus of public opinion as expressed in the jurisprudence of the country upon this important point. He says:

"The principle has been recognized in many States and it has now become a well established rule of law that the railroad commission is an administrative board, created by the State for carrying into effect the will of the Legislature, as expressed by its legislation. Its authority and duty are not limited to matters concerning public safety and health, but extend to matters concerning public comfort and convenience. * * * From the very nature of things, there must arise from time to time differences between the corporation, seeking to derive from its corporate rights the utmost personal advantage it can, and the State, seeking to obtain through its conduct and action the greatest good possible for the public. These differences may arise at any time between them upon matters of detail or administration more or less important. As it would be manifestly impossible to anticipate what these causes would be or when they would arise, different States have found it necessary to constitute a body charged, as their representatives, with the duty of guarding the

public interests upon this particular subject, to which they have expressly given very broad authority and powers. Such bodies are the railroad commissions of the several States."*

It is pertinent here to give the names of those States which have organized railroad commissions, in order that the trend of public action may be followed. In 1890 the movement had been fairly well established, and that year has been used by Professor Adams, and followed by the writer, as the basic year for the purposes of comparison. All commissions which were in existence in that year are followed by the figures "1890." Commissions which have since been organized are followed by the figures for the year in which they were organized.

Powers of Various Commissions

States in which railroad commissions exist, having power to regulate rates, are:

Alabama. (1890)—The Commission's findings are *prima facie* reasonable and just. The law has never been strictly enforced.

Arkansas. (1904)—Although Arkansas had a Commission in 1890 it was abolished in 1895, and reorganized by the Legislature, with power to regulate rates, in 1903.

California. (1890)—One of the first Commissions organized with the rate making power. The Commission's rates are deemed reasonable and just in all civil and criminal cases.

Florida.—The original Commission was abolished in 1901, and reorganized in 1902. Rates established by it are *prima facie* reasonable.

Georgia. (1890)—The rates fixed by the Commission are "sufficient" evidence of their reasonableness.

Illinois. (1890)—The rates fixed by the Commission are *prima facie* reasonable.

Iowa. (1890)—The rates fixed by the Commission are *prima facie* reasonable.

Indiana. (1905)—The rates fixed by the Commission are presumed to be reasonable until reversed by the courts.

Kansas. (1890)—Abolished in 1898 and Court of Visitation created. This court was declared unconstitutional by the Supreme Court of Kansas in 1900. Present Commission was organized in 1901. Rates fixed by it are *prima facie* reasonable and just.

Kentucky. (1890)—The Commission can declare rates unreasonable, but has no power to fix reasonable rates.

Louisiana. (1898)—Commission shall fix reasonable rates; and may enforce its orders through the courts.

Maine. (1890)—Has power to fix rates, but has never exercised it.

Minnesota. (1890)—Commission's rates are *prima facie* reasonable.

Mississippi. (1890)—Commission's rates are *prima facie* reasonable.

Missouri. (1890)—Commission's rates are *prima facie* reasonable.

Nebraska.—Abolished in 1901.

New Hampshire. (1890)—Rates fixed by the Commission are binding on proprietors of railroads.

North Carolina. (1891)—Corporation commission abolished in 1899. Commission reorganized by act of Legislature in 1904.

North Dakota. (1890)—Rates fixed by Commission are *prima facie* reasonable.

Ohio. (1906)—Rates fixed by Commission are *prima facie* reasonable.

* Commissions had been organized previously in some States, though none had yet been given the power to regulate freight rates.

* 109 La. 247.

South Carolina. (1890)—Rates fixed by Commission are "sufficient" evidence of their reasonableness.

South Dakota. (1890)—Rates fixed by Commission are *prima facie* reasonable.

Tennessee. (1890)—Rates fixed by Commission are *prima facie* reasonable.

Texas. (1891)—Rates fixed by Commission are *prima facie* reasonable.

Washington. (1904)—Commission shall fix reasonable rates, which are presumed to be reasonable until revised by the courts.

Wisconsin. (1890)—Commission reorganized in 1904 and given power to fix rates. Commission's rates are presumed to be reasonable until revised by the courts.

State commissions not having power to fix rates exist in the following States: Colorado, Connecticut, Massachusetts, Michigan, New York, Rhode Island, Vermont, Virginia.

Railroad commissions have existed, with various powers, and have been abolished without reorganization in the following States: Arizona, Nebraska, Oregon.

No State railroad commissions have ever been organized in the following States: Delaware, New Jersey, Pennsylvania, Maryland, Virginia, Nevada, Wyoming, Idaho, New Mexico, Utah.

All Seek the Same Ends

The reports of the State railroad commissions vary considerably in their methods of presenting statistics and results; yet from them may be gathered sufficient information to show, in a general way, what results have been attained. And it is clear that most State commissions have the same ends in mind, though the means of obtaining them are as widely different as the laws under which the commissions work. One thing is notably true, and that is the best and most permanent results seem to have come from those States where the railroad commissions have not exercised the full authority given them, but have pursued a broad policy and secured gradually those reforms which have been made necessary by changing conditions. It is equally true that in those States where the best results have been obtained there has been apparently little litigation between the railroads and the commissions; and it appears that the commissions which have been over-weighted with authority, in attempting to use their power to the fullest limit, have weakened their laws by crowding the courts with suits for the enforcement of their orders, or by the adoption of drastic measures which always result in injunction proceedings on the part of the corporations interested. The rule is, however, that the commissions exercising the full limit of their authority are the exception, while a good majority of our State railroad commissions have adopted the policy of gradual changes in rates, with a decided tendency to keep their findings away from the courts, even when, in order to accomplish this end, it is necessary to compromise a lawsuit by accepting less than was contemplated in the order contested.

From information which has been furnished me by various State railroad commissions I am able to out-

line the experiences of these commissions in litigated cases. Considering the great number of orders issued by the railroad commissions in the United States annually, it is remarkable that so few of them have been contested. One must naturally conclude that their enforcement has been frequently overlooked, or, if not that, then the policy of these commissions must have been to follow closely the natural advancement of railroad development, and to have made their orders in conformity with that acute judgment which coincided with the views of the railroad or the commission carrying the case to the courts.

References to Litigated Cases

From the officers of the railroad commissions in the States the following references to litigated cases are given:

ALABAMA.—There has been but one suit in which the Railroad Commission was interested, and that was relative to a change of depots.

ARKANSAS.—There have been no decisions for or against this Commission since its reorganization in 1905.

CALIFORNIA.—There has been much litigation in this State over the orders of the Commission, but owing to the absence of any reference to the litigated cases in the Commission's Annual Report, and the inability at this time to secure the necessary references, it is impossible to include them in this statement.

GEORGIA.—The Railroad Commission of Georgia has been in court on a number of its orders and has, in most of these suits been sustained (70 Ga., page 694). (72 Ga., page 374). (72 Ga., page 655). (86 Ga., page 251). A decision was rendered a few years ago by the Federal Court of Appeals, at New Orleans, sustaining the Commission in its decision requiring express companies to affix war revenue stamps to their receipts. The Commission's Circular No. 301, establishing commodity rates between Atlanta and Marion, Columbia, and Athens, and Augusta, and Circular No. 302, establishing rates on syrup, released, from stations on the Atlantic Coast Line to Columbus and Atlanta, were contested by the railroads interested, and a compromise was effected, and the cases withdrawn. The Commission is now in court on its Circulars Nos. 309, 316, 317 and 319 upon injunction proceedings in each case, taken out by the railroad companies interested. Circular No. 309 fixes rates on stoves, stove plates, stove furniture, and hollow ware. Circular No. 316 places the Central of Georgia Railroad in the Commission's Class "B," and establishes lower rates on authorized classes than previously existed. Circular No. 317 places the Atlantic Coast Line in the Commission's Class "A-1," thereby lowering the rates formerly charged by this railroad. Circular No. 318 places the Southern Railroad in the Commission's Class "B," thus reducing the company's rates. No decision has been reached at this writing in any of these cases.

FLORIDA.—No digest of the decisions of the courts affecting the Railroad Commission has yet been made; but the printed records of the Railroad Commission show it to have been comparatively free from litigation.

INDIANA.—No decisions have yet been rendered against this Commission; but the Commission has been taken into court on several of its orders, where the proceedings are pending. The Commission has thus far been sustained by the courts in all of its preliminary motions and demurrers.

IOWA.—In the last nine years the Railroad Commission of Iowa has had but one of its orders appealed to the courts, and before coming to trial the railroad company interested decided to obey the order, and proceedings were stopped. There are no suits pending.

Important Cases in Louisiana

LOUISIANA.—There have been several decisions rendered by the courts of the State, and the Federal Courts, affecting the Railroad Commission of Louisiana. An injunction proceeding, instituted by the Kansas City Southern Railway Company against the Commission to set aside an order by the Commission fixing a rate of 50 cents per bale on cotton, from Vivian to Shreveport, was made perpetual by the United States Circuit Court of Appeals. The State Supreme Court sustained the Commission in an order requiring the M., L. & T. R. R. & S. S. Co. to build a depot at Berwick. The Supreme Court of the State has held that the authority and duty of the Railroad Commission is not limited to matters concerning public comfort and convenience. In disposing of matters of dispute between the railroads and the Railroad Commission, the Supreme Court acts as a tribunal and not as a mere administrative body. (109 La., 247.) The same court declared that the Louisiana Railroad Commission had the right to prevent the removal of a spur track or a siding once constructed, but could not require a spur track or siding to build at any place except "at depots." The same court has held that Act 286 of the Constitution of 1898 gives the Railroad Commission authority to sue to recover a penalty for violation of its orders, subject to review. (R. R. Com. v. K. C. S. Ry. Co. 111 La., 133.) The same decision declares that the Commission has power to make its orders executory after reasonable notice to parties concerned. Several rate cases have been compromised after appeals were taken by the railway affected. There are now pending a number of important cases. A suit is pending in the Federal Courts seeking to set aside the Commission's order fixing a mileage schedule of rates on cottonseed between points on the Texas & Pacific Railway. The M., L. & T. R. R. & S. S. Co. & I. C. & Y. & M. V. R. R. Co.'s have appealed to the State courts from a decision recently rendered by the Commission reducing the rates on sugar cane between all points in the State. The La. Ry. & Nav. Co. has appealed from an order rendered in July by the Commission, requiring a depot to be located and built at Gonzales, the company claiming that the site it has selected has advantages over the one chosen by the Commission. There is also pending in the Federal Court a proceeding against the Commission, in which all railroads in the State have joined, challenging the constitutional right of the Commission to require one railroad company to switch cars for another railroad.

Massachusetts Cases

MASSACHUSETTS.—The activity of the Massachusetts Railroad Commission is evidenced by the fact that numerous decisions have been rendered by the courts in this State affecting the Commission's orders. On account of their importance, and the generality with which they have been cited, a full digest is here given of each of the cases appealed to the Supreme Court from the decision of the Commission:

(113 Mass., page 161.)

ORDER OF BOARD, MAY 8, 1873.

MAYOR AND ALDERMEN OF WORCESTER V. BOARD OF RAILROAD COMMISSIONERS; ATTORNEY GENERAL V. NORWICH & WORCESTER RY. CO. AND OTHERS.

The first case was a petition for a writ of certiorari to quash certain proceedings of the board on May 8, 1873, when two commissioners, Messrs. Briggs and Johnson (Mr. Adams having left the country as commissioner to Vienna, his commission having expired in April and he not being reappointed until September 29, 1873), passed an order, and August 12 of the same year a supplementary order, locating and defining the course, grade and mode of construction of a viaduct near the Union Passenger Station, in the city of Worcester, without application to or consent of the mayor and aldermen. The court found that the orders of the board were valid and the writ of certiorari was refused. In the second case, which

sought to restrain the railway companies by injunction from building the viaduct, the judgment was for the defendants. (1873.)

(118 Mass., page 290.)

METROPOLITAN RY. CO. V. HIGHLAND STREET RY. CO.

The petitioners excepted through the report of the Railway Commission, who, under Chapter 381 of the Acts of 1871, had determined the compensation to be paid for the use of its tracks by the respondent. The award was accepted, the court ruling that while the Legislature has reserved the power to alter, amend and repeal the charter of the street railway corporation, it may lawfully authorize another corporation to use its tracks or to lay similar tracks through the same streets, making compensation for the use of the tracks of the first corporation without making any compensation for the diminution of its profits or franchise; and that it was within the discretion of the Railway Commissioners under the authority of the statute quoted to determine the rate of compensation to be paid, to establish rules and modes of apportioning expenses and estimating expenses between the corporation. To the exercise of that discretion, if no question of law is involved, no exception lies. (September 5, 1875.)

(118 Mass., page 561.)

ORDER OF BOARD, MARCH 24, 1875.

WORCESTER & NASHUA RAILROAD CO. V. RY. COMMISSIONERS.

This was a petition for a writ of certiorari to bring up and quash the proceedings of the board in connection with its authorization of the Boston, Barre & Gardner Railroad Corporation to take, as well as use, lands within the location of another railroad in Worcester in connection with the use of the Union Station. The report was originally dismissed, owing to lack of notice to the Railroad Commissioners, on the ground that in such petition the tribunal against which the proceedings were brought is the only party that can file an answer or demurrer to the petition. The petitioner then amended its petition by inserting an allegation that all proceedings appeared by their records, and exhibited an attested copy thereof. The court found that order of the Railroad Commission was erroneous in two respects: (1) In authorizing the Boston, Barre & Gardner Railroad Corporation to "take" as well as use lands within the location of the Nashua & Worcester Railroad Company; (2) in not fixing the compensation to be paid by the former corporation to the latter.

The writ of certiorari was therefore issued, upon return of which the errors might be corrected and the Railroad Commissioners directed to proceed anew according to law. (October 8-22, 1875.)

(137 Mass., page 45.)

ORDER OF BOARD, OCTOBER 11, 1881.

ATTORNEY GENERAL V. EASTERN RAILWAY COMPANY.

This was an information to restrain the respondent corporation from continuing an abandonment of its station at Water street in East Everett, the Railroad Commissioners having approved a relocation of the station on petition of the selectmen of Everett. The information was dismissed. (March 4, 1884.)

(138 Mass., page 277.)

PROVIDENCE & WORCESTER RAILROAD COMPANY V. NORWICH & WORCESTER RAILROAD COMPANY.

This case was connected with the location of tracks of various companies entering the Union Station at Worcester, the question being whether the board had the right to confer and impose upon several railroad companies the right and duties which it attempted to confer and impose by its decree, as the condition upon which it approved and authorized the location of the defendant company. One of these conditions was that the plaintiff was given the right to use one of the tracks of the defendant. The bill was dismissed. (January 13, 1885.)

(139 Mass., page 454.)

ORDER OF THE BOARD, JUNE 27, 1884.

CAMBRIDGE RAILROAD COMPANY V. CHARLES RIVER STREET RAILROAD COMPANY.

By the act incorporating the Cambridge Railroad Company, provision was made that it should pay the Hannock Free Bridge Corporation compensation for the use of the bridge. The Commission made an award whereby the company was to pay \$33,000 in 6 per cent. bonds to the the bridge corporation. This amount was paid, although the bridge was made a free bridge before the tracks upon it were used by the company. The Railroad Commissioners, in determining the amount which the Charles River Street Railway Company should pay the Cambridge Railroad Company for the use of its tracks, included this sum of \$33,000 in cost of construction of the road as part of the basis of award. The case was heard before Colburn, J., who reserved it for consideration of the full court, which accepted the award, on the ground that it was within the discretion of the board to have regard to the cost of constructing the road and to include in this cost the said sum of \$33,000. (June 22, 1885.)

(143 Mass., page 264.)

ORDER OF THE BOARD, JULY 25, 1885.

COMMONWEALTH V. HOUSATONIC RAILROAD COMPANY.

This case involves the action of the board in fixing the maximum rates which the Housatonic Railroad Company might charge for transportation of certain kinds of freight between various points in Massachusetts and other points in Connecticut. Decision by full bench (three judges absent), that the provision of Chapter 388 of the Acts of 1885, providing that the board should fix such rates, was in conflict with Section 8 of Article 1 of the Constitution of the United States, providing that Congress shall have the exclusive power to regulate "commerce among the several States," and is invalid. (July 7, 1887.)

(153 Mass., page 161.)

ORDER OF BOARD, JULY 19, 1890.

CITY OF CAMBRIDGE V. BOARD OF COMMISSIONERS.

This was in connection with the building of the Harvard Bridge over the Charles River between the cities of Boston and Cambridge, Section 6 of Chapter 155 of the Acts of 1882 providing that the avenues connecting with the bridge "may cross at grade any railroad operated by steam," and giving the Board of Railroad Commissioners, on application, authority to prescribe the details. The City of Cambridge laid out Front street, now Massachusetts avenue, in such a manner as to cross the Boston and Albany tracks at grade, and petitioned the Railroad Commissioners to prescribe the details of the crossing. The board issued an opinion that the City of Cambridge had no authority to lay out Front street at grade over the railroad, and made an order that it be carried over the railroad on an iron bridge at a height of not less than 16 feet above the railroad tracks.

Petitions for certiorari and mandamus were brought by the City of Cambridge against the board, the full court deciding that the form of remedy should be certiorari and not mandamus, on the ground that the board did not refuse to act, but in acting they acted upon an erroneous construction of the statute. A writ of certiorari was therefore ordered to issue. (January 12, 1891.)

(158 Mass., page 1.)

ORDER OF BOARD, MAY 26, 1891.

LITTLEFIELD V. FITCHBURG RAILROAD COMPANY.

It was held by the Superior Court on demurrer that the court could not go outside of the records before it and that the board's order was invalid for want of notice to the defendant company, and this finding was sustained by the full bench.

(158 Mass., page 104.)

ORDER OF BOARD, MAY 9, 1892.

CUNNINGHAM ET AL. V. BOARD OF RAILROAD COMMISSIONERS.

Petition for writ of certiorari to quash proceedings of board in approving the proposed relocation of the Longwood and Chapel stations, in Brookline, and their union in one station. Heard by full bench and petition dismissed. (January 7, 1893.)

(175 Mass., page 518.)

ORDER OF BOARD, MAY 4, 1899.

DANIELS V. COMMONWEALTH AVENUE STREET RAILWAY COMPANY.

This was a case where abutments sought to have a location of the defendant street railway declared void, and the defendant enjoined from entering upon location. The defendant demurred to the bill for want of equity, want of jurisdiction, etc. Hearing before Morton, J., who sustained the demurrer.

Plaintiff appealed to the full bench, where the bill was dismissed. Holmes, C. J., in his opinion, held that a bill in equity, under Section 25, Chapter 587 of the Act of 1898, may be maintained to the extent of revising the rulings of the Board of Railroad Commissioners. (March 3, 1900.)

Little Litigation in Minnesota

MINNESOTA.—Litigation over the Commission's orders in this State has been infrequent. There is now pending in an inferior court the case of the State v. Chicago Great Western Railway, in which the railroad appealed from an order of the Commission, declaring it unlawful for the company to charge a greater sum for switching cars to the company's industrial tracks than it charged Swift & Co. for switching cars from St. Paul to Swift's private warehouse. Upon the constitutionality of the Railroad Commissioners' law, Section 225. (See State v. Edwards; decided February 17, 1905. Minn. State Supreme Court.)

MISSISSIPPI.—The citations which are given relate to subjects which come under the control of the Commission in this State, and are also of interest as bearing upon the rulings of other State Railroad Commissions: The Legislature can rightfully regulate, etc., speed of trains in passing through cities, towns and villages. (51 Miss., 137.)

Railroad company is liable for stock killed by its locomotive running in a town at a greater speed than six miles an hour. (59 Miss., 248. On same subject see 59 Miss., 458; 63 Miss., 458; 61 Miss., 519; 62 Miss., 682; 64 Miss., 784; 63 Miss., 581.)

The word "highway," as used in Section 3,552 Mississippi Statutes (where they intersect with railroads, and requirements are made that the railroad company shall protect them by having sign posts erected), means a public road in the country, and not a street in a city, town or village. (51 Miss., 137.) The Supreme Court of Mississippi has held that a party can recover for damages to live stock when it results from "mismanagement" or "neglect" of company's agents. (42 Miss., 603; 43 Miss., 33; 43 Miss., 259. Mobile R. R. Co. v. Grey, 62 Miss.)

The same court has held that the statute requiring the separation of the races is constitutional and not in violation of Section 8, Article 1 of the Constitution of the United States. (66 Miss., 662. Affirmed by the U. S. Court, 113 U. S., 587.) While this is a statutory regulation in Mississippi it is also incorporated in the rules and regulations of several State Railroad Commissions of the Southern States. As to a conductor's duty to quell disorderly conduct, see King v. Ill. R. R. Co., October Term State Supreme Court, 1891. The rule is laid down in Mississippi that the State has the right to prescribe the compensation a railroad shall receive for carrying passengers and freight within its borders. (62 Miss., 607.) Also that the State may supervise railroads and regulate their charges through a commission. (62 Miss., 646.) As to delivery of telegraph messages, which came under the Commission's control, it has been held that the statutory penalty is not inforceable where the message is to be delivered beyond the limits of the State. (66 Miss., 161; 66 Miss., 549. On same subject see 67 Miss., 288; 68 Miss., 1.)

MISSOURI.—But few of the Commission's orders have been appealed. There is now pending a proceeding in the Federal Court at St. Louis, controlling the constitutionality of House Bill 208-835. (See pages 469-471 Mo. report.) There is also pending in the State Supreme Court an action to test the constitutionality of the laws requiring railroad companies to furnish free transportation for return of attendant or shipper accompanying one car of live stock.

NEW HAMPSHIRE.—No compilation of decisions affecting the Commission is available. There are no suits in which the Commission is interested pending at the present time.

New York Decisions

NEW YORK.—The court decisions in New York have reference chiefly to those sections of the law relating to grade crossings, and the certification made by the Commissions of part of a street surface railroad. The following citations and the subject of the section of the New York railroad law are given for reference:

Intersection of one railroad by a new railroad—171 N. Y. 589, 75 App. Div. 412, 175 N. Y. Mem. 468, 106 App. Div. 375.
Change of route, grade, or terminus—172 N. Y. 462, 177 N. Y. 337.

Accommodation of connecting roads—171 N. Y. 589, 75 App. Div. 412, 175 N. Y. Mem. 468.

Legislature may alter or reduce fare; anti-ticket scalping act—168 N. Y. 671.

Requisites to exercise of powers of future railroad corporations—96 App. Div. 471, 178 N. Y. 75; 105 App. Div. 273; 103 App. Div. 123; 101 App. Div. 251.

Grade crossing law; also A. M. James et al. and N. Y. C. & H. R. R. Co. v. Board of Railroad Laws, App. Div., etc.—176 N. Y. 324; 177 N. Y. 377; 179 N. Y. 393; 181 N. Y. 132.

Expenses of installing grade crossings—75 App. Div. 412; 175 N. Y. Mem. 468.

Street Surface Railroads—96 App. Div. 471; 178 N. Y. 75; 88 App. Div. 201.

Rate of speed; repair of streets—182 N. Y. 99; Fares, 179 N. Y. 450.

Legal effect of recommendations and action of the Commission—89 App. Div. 325.

OHIO.—There have been no appeals yet taken from orders rendered by this, the latest organized Railroad Commission in the United States.

RHODE ISLAND.—There are no suits pending to which the Commissioner of this State is a party. The reports show no decision of the courts for or against the Commission.

TENNESSEE.—In this State there have been no decisions rendered by the courts either for or against the Commission. There are no suits pending. The only finding of the Commission that was ever appealed had reference to the payment of taxes on the property of the Kansas City, Fort Scott & Memphis Railway. In this case the Commission was sustained. The case was tried in the Federal Court.

TEXAS.—Ranking among the most active of the State railroad commissions, the Railroad Commission of Texas has been in much litigation with the railroads, and the following citations are given as evidence of the Commission's activity:

Reagan v. Farmers' Loan & Trust Company, 154 U. S. 362. (This was the original injunction suit against the Commission, in which the Commission was sustained.) Railroad Commission v. H. & T. C. R. R. Co., 90 Tex., 340. (16 T. C. App. 133).

Railroad Commission v. Wild & Neville—95 Tex., 278.

D. & S. Ry. Co. v. Railroad Commission—95 Tex., 617.

Railroad Commission v. St. L. S. W. Ry. Co.—80 S. W. Rep. 102; G. C. & S. F. Ry. v. Railroad Commission, 73 S. W. Rep. 429. (Now pending before the United States Supreme Court of Appeals.)

The Texas Commission has been twice enjoined by the express companies from reducing express rates. Compromises have been made in both cases. There is now pending a pro-

ceeding instituted by the trunk lines, in Texas, asking for a permanent injunction against all the Commission's rates. It is expected that this proceeding will be heard in January.

VERMONT.—The only decision in Vermont affecting the Commission's orders was rendered several months ago, and declared void for lack of proper notice to the railroad company—an order relative to an accident. There is now pending before the Supreme Court an appeal from an order of the Commission directing the Rutland Railroad Company to erect a station at a place called Bartonville.

WASHINGTON.—No appeal has ever been taken from any orders or rulings of this Commission, and hence there are no decisions for or against it.

WISCONSIN.—There have been no appeals from any decisions or orders of this Commission.

State Commissions Stronger

Independently, State railroad commissions can do but little toward solving the great railroad problem. Two fields of operations have to be covered, differing entirely from each other and depending upon separate conditions for the proper exercise of the rate regulating power. Interstate rates cannot be regulated by State commissions. State rates cannot be controlled by the Interstate Commerce Commission. Each is independent of the other.

There seems to be a latent impression among shippers that the usefulness of State railroad commissions will be impaired by the increased powers of the Interstate Commerce Commission. Not so. For many years State railroad commissions have felt the lack of power of the Interstate Commerce Commission in attempts to enforce their orders. Shippers who are sending their products to interstate points as well as to local points know this. A large shipper of lumber, living near the border line of a State, may find the rate he pays on a strictly intrastate shipment excessive—even exorbitant. He fears retaliation on the part of the railroad, which threatens, if he becomes active in any attempt to secure a reduction of the State rate, to advance the interstate rate or refuse him cars for interstate shipments. He therefore suffers in silence the wrong that he knows is being done him. This lack of power in the Interstate Commerce Commission has unquestionably been effectively used to hamper the activity of the State railroad commissions, if not directly, then through the medium of the shippers. It has gone further than that. State commission cases are actually on record where railroad companies have given notice of increases in interstate rates after the reduction of State rates by State commissions had been made, and suits have been compromised in order to save shippers from the distress in interstate business which would follow.

The new powers of the Interstate Commerce Commission, therefore, if properly exercised, will only strengthen the power of the State commissions, and better results are to be expected now from State commissions than in the past.

Responsibility of the Courts

After all, much reliance must be placed in the courts. When the right of appeal does not exist, the

right of injunction does, and either proceeding places an effectual stop on all commission orders. The law's delays grow longer year by year. The simplest case requires a year at least for determination in the Supreme Court of a State, and complicated rate cases requiring the testimony of many witnesses, the preparation of lengthy "briefs," and the expression of voluminous opinions, take from two to three years before a final determination is reached. Under the old order of things a Federal case (and the State commissions are frequently brought before the Federal courts), which must eventually find its way to the United States Supreme Court, consumes from two to four years in its trial. During the *pendente lite* the shipper is paying the old rate. He has no alternative. The State commission cannot act, but must patiently await the final decision. Unquestionably, many of these delays

might be avoided. But who has found the means of hastening skilled attorneys whose clients' chief interests lie in securing long delays? How much, then, depends upon the courts! To them must be referred all the great railroad problems of the country. Upon them rests the responsibility of deciding what is right between the commissions and railroads. To the commissions belongs the administrative function of carrying out the legislative will. To the courts belong the judicial functions of determining the correctness of the commission's interpretation of the law and the evidence. No wonder the State commissions do not enter quickly into litigation with the railroads! No surprise that the railroads are ready and quick to file suits against railroad commissions to determine the justness of their orders! One has nothing to gain—the other nothing to lose.

Express Companies and the New Rate Law

BY JAMES E. JOHNSTONE

(Continued from the September number of FREIGHT.)

It should be remembered that in shipping articles by express the limit of value, unless otherwise specially stated and agreed upon, is \$50 per package. If one gives to an express company an article for transportation so classed as to take merchandise rates, but desiring to place upon the package a greater valuation than \$50, the rate is increased. It is immaterial whether or not the package is insured. If one states that the value exceeds \$50, the increase charged is based upon the rate. Thus, if one sends a package, the rate on which will be \$1 or less per 100 pounds, but the declared value is more than \$50, the rate is 5 cents for each additional \$100; if the rate is between \$1 and \$3 per 100 pounds, the additional charge for each \$100 value is 10 cents; from \$3 to \$8 per 100 pounds, the additional charge is 15 cents; when the rate exceeds \$8 per 100 pounds the rate is 20 cents. These rates do not apply to shipments of money (except that they apply on certain minor coins), nor do they apply to shipments of bonds, valuable papers, postage and internal revenue stamps.

Live Stock Rates

For live stock and other animals the live stock rates apply where the valuation does not exceed for horses, jacks, mules, \$75; for burros, calves, colts, sheep, steers and animals in general, \$50 each; for birds, cats, ferrets, dogs, fancy fowls, \$5 each. If a shipper desires to make an express company liable for a greater value than stated, the liability assumed will depend upon the rate. If the rate be \$1 per 100 pounds the additional charge will be 5 per cent. of the excess valuation; thus, if a horse weighing 1,000 pounds should be valued at \$1,000, the actual rate would be \$10, but the charge for the excess valuation would be \$46.25. If the rate is between \$1 and \$2 per 100 pounds, the additional charge for valuation

is 7 per cent. of the excess; from \$2 to \$3 per 100 pounds the additional rate will be 10 per cent.; \$3 to \$5 per 100 pounds the additional rate will be 12 per cent.; when the rate is over \$5 per 100 pounds the additional charge will be 15 per cent. of the excess valuation.

C. O. D. Matter

One of the important functions performed by an express company is in connection with C. O. D. matter. If one desires to send a package to destination, but wishes to receive pay therefor before the goods shall become the property of the purchaser, he may send them C. O. D. It is necessary that the letters C. O. D. and the amount to be collected be plainly marked upon each package. One may signify whether or not the charge for the return of the money shall be borne by the purchaser or by the seller. The express company may, by written authority, allow an examination or partial delivery of the goods to the purchaser. If part of the goods be taken, a collection pro rata may be made and the balance returned. And curiously enough, if one desires to change the consignee at destination when the shipment is a C. O. D. package, an additional charge of 10 cents is required, which must be prepaid. C. O. D. matter will be held at destination if not accepted for a period of thirty days, after which it will be returned to the shipper at his cost and expense.

Discrimination in Coin Rates

A considerable part of the express business is the shipment of coin. For this there are two classes of rates. One scale is for lots of less than \$5,000 and applying for any person who desires to make shipments of coin; the other applies only to bankers and money brokers when in lots of less than \$5,000, but applies to any shipper in lots of \$5,000 and over. While there appears to be no reason why a banker

or money broker should pay less for transmitting coin than any one else, it is, nevertheless, the fact, where the ordinary individual pays \$1.50 for shipping coin, the banker or money broker pays \$1. Such a rate would be per \$1,000 and would apply between points where the merchandise rate is from \$2.50 to \$3. Thus, to carry \$1,000 in currency or gold coin from Chicago to New York (the merchandise rate being \$2.50) the charge to the banker or money broker would be \$1; to one not thus engaged, \$1.50. The same discrimination prevails as the merchandise rate increases. The merchandise rate from Chicago to Los Angeles is \$11.50 per 100 pounds and the liability of the express company is limited to \$50 per package. But to transport \$1,000 between these points the charge to the banker or money broker is \$3.25; to an ordinary individual \$5.75. Where the amount of currency or gold coin transported is less than \$1,000 the rates are relatively much higher. To transport \$100 or \$150 from Chicago to New York the rate is 50 cents to the individual and 35 cents to the banker. To transport the same amount of currency to Los Angeles the rate to the individual is \$1.35; the rate to the banker is 90 cents. For silver coins in amounts less than \$1,000 the rates are much higher, being based upon the merchandise rate and not based as the currency and gold coin rates are for amounts less than \$1,000, which are based upon the currency rates for \$1,000.

Where the merchandise rate is \$2.50, the rate for sending silver coin to the amount of \$100 or \$150 is 95 cents. It will be observed that where the merchandise rate is \$2.50 per 100 pounds, the rate for \$100 or \$150 to bankers and money brokers, provided the money is currency or gold coin, is 35 cents (individuals, 40 cents); but if the money be silver coin the rate is more than double. The cost for transporting \$100 in silver coin is the same as for the transportation of 100 pounds of merchandise, while the rate for transporting \$1,000 in currency or gold coin is about one-half the cost of transporting 100 pounds of merchandise, provided it be by an ordinary individual, but if shipped by a banker or money broker, about one-fourth.

Two Forms of Express Receipts

The contract of carriage by express companies varies with the company. The receipts are not uniform in all their particulars. Express receipts are of two forms. One applying to live stock, which takes a special contract containing the exemption from liability and the other for merchandise.

Let the merchandise receipt be considered first. The liability of the company as before stated is limited to \$50, unless a greater value shall be stated, in which event an increased rate is paid. The receipt provides that on delivery of the property at the nearest point to which the express company can carry the same, the liability of the company shall cease. The company assumes no liability for fragile fabrics

or fabrics made or contained in glass packages, as these, as we have seen before, are carried only at owner's risk. Express receipts are marked "Not Negotiable," and are subject to the rules of law applying to quasi-negotiable instruments having such an imprint. In order to avoid liability most of the express companies undertake to transport the commodities as forwarders only; the object of this is not to make themselves liable as insurers of the goods. The usual form of receipt says that the company is "not to be held liable for any loss or damage, except as forwarders only, by the dangers of navigation, by the act of God, or of the enemies of the Government, restraints of government, mobs, riots, insurrections, pirates, or through or by reason of any of the hazards or dangers incident to a state of war."

Liable for Nothing

While these exceptions would seem to cover a sufficient number of causes by which goods might be lost or damaged, yet it is further provided that the company shall not "be liable for any default or negligence of any person, corporation or association to whom the above described property shall or may be delivered by this company, for the performance of any act or duty in respect thereto, at any place or point off the usual route or line run by this company, and any such person, corporation or association is not to be regarded, deemed, or taken to be the agent of this company for any such purpose, but on the contrary, such person, corporation or association shall be deemed and taken to be the agent of the person, corporation or association from whom this company received the property above described."

The meaning of this provision is reasonably clear. The express company is liable for nothing. If there be negligence on the part of some one into whose possession the express company may deliver the property or to whom it may by chance be delivered, the third party, perhaps totally unknown to the shipper, becomes the shipper's agent. But it is also understood that the company "shall not be liable for any damage to said property caused by the detention of any train of cars, or any steamboat upon which said property shall be placed for transportation; nor by the negligence or refusal of said railway company or steamboat to receive and forward the said property." In other words, the express company holds itself blameless for the acts of the transportation company whose facilities it employs in the conduct of its business. The transportation company occupies a contractual relation to the express company. Under that contractual relation a shipper consigns by express goods to be transported. There is no contractual relation between the shipper and the transportation company. The express company refuses to be bound by the acts of the transportation company. The contract usually existing between the express company and the railway company releases the latter. In short, the express company is not liable, the railroad is not liable, no

one is liable. In the event of loss or damage the shipper finding himself between two millstones—the express company and the transportation company—he is lucky if he comes out with the grist in a whole condition. While the individual usually comes out whole, his pocketbook still remains flat for the want of the receipt of the value of the goods. The only event in which the express company holds itself liable is when the loss or damage shall “be proven to have occurred from the fraud or gross negligence” of the company or its servants, and then only to the extent of \$50. One would assume from this that the relation between the express company and the shipper was so close that the two were really identical. A time limit is placed upon claims so that whatever may be the cause of the loss or damage, it is provided that the same shall be filed at the shipping office within sixty days from the date on which the receipt is issued. An acceptance of the receipt specifically provides that the conditions of it are agreed to by the shipper. The language by which this is accomplished varies, but each express company's receipt binds the shipper to the conditions and limitations named therein.

The Livestock Contract

The live stock contract which covers the shipments of animals and birds, contains, first of all, the valuation, which must be declared in accordance with the rules which have heretofore been laid down. This contract is a special contract signed by the agent of the company and the owner or a duly authorized agent of the owner of the property. The valuation placed upon the animals binds the shipper; he cannot thereafter be heard to say that the valuation is too low. In this contract the shipper agrees that the responsibility of the express company shall be that of a forwarder and not that of a common carrier. Properly enough, the express company is not liable for the inherent viciousness of the animals. But the same cannot be said of the condition by which the shipper releases the express company from all liability for delay, unless the delay shall be caused by the negligence of the agents or employees of the express company. This provision is akin to that of the merchandise contract by which the express company does not hold itself liable for the negligence of the transportation companies which it employs in the conduct of its business. In no event, if an animal shall be totally lost, is the liability of the express company to exceed the value stated by the shipper; if the injury be less than a total loss, the liability of the express company is the proportion which the value as declared by the shipper bears to the market value of the animal if it had been uninjured at destination. The express company in the shipment of live stock reserves the option, if the same be refused at destination, in cases where other than the express charges are to be collected, to retain the stock at the risk and expense of the shipper or to return the stock to the shipper, he to pay transportation and other expenses both ways.

In the loading and unloading of stock the shipper assumes all liability, but the express company furnishes the necessary labor to assist. It would appear to be immaterial to the company what class of labor was furnished or how negligent the men might be since the shipper assumes all risks incident to loading and unloading. If the stock is not unloaded immediately upon arrival, it is provided that same may be placed by the express company in a suitable place at the cost and risk of the shipper or the consignee, and may at any time thereafter sell all or a part at public or private sale, with or without notice to the consignee or shipper, as the agent of the express company may deem necessary or expedient, the proceeds arising from the sale to be used for the payment of freight or charges and other necessary costs and expenses. Under such a condition a shipper is given absolutely no show for his “white alley.”

Limitation of Claims

If the shipment of live stock be refused for any reason neither the owner nor consignee may be notified, and the express company reserves the right to sell it without regard to rights of any party. Claims for loss or damage to live stock must be filed according to the stipulation within thirty days after the loss and damage accrues, and a statute of limitation is provided, that if the express company is made a defendant in a suit to recover for loss or damage, it must be brought within six months. If the shipper or consignee shall fail to bring such suit within the specified time the “lapse of time shall be taken as conclusive evidence against the validity of any such claim and any statute of limitation to the contrary notwithstanding, * * * and the shipper hereby so expressly stipulates and agrees.”

Comment upon the making of this law of limitations is scarcely necessary. Were the time reasonable, then it would not be burdensome. But when the hard and fast line—six months—is made, it forcibly indicates the character of the contract which the shipper is compelled to execute. Persons attending live stock release the express company and the transportation companies over which they travel from any liability for injury or loss of life occurring during the transportation, and further agree that the attendant, his heirs, and administrators will indemnify the express company for all expenses incident to any suit at law against the express company by reason of injury or loss of life or property. It would appear to be enough for an attendant, if he be injured, to waive his rights to suit. But should some attorney see fit to contest the validity of this provision, the attendant, his heirs, and administrators, must indemnify the express company for expenses in this behalf to which they have been subjected.

Concerning Franks

What the pass is to passenger transportation the frank is to the express business. No one knows the number of them or how much pull one must have to

get the frank. Certain it is that when one is a "really truly friend" and has a political pull he is pretty liable to enjoy the pleasure of a frank over one or more lines of express. A frank is good whether the possessor is a shipper or a consignee. If one have a frank and be a shipper the shipment is sent D. H.; if, however, he be a consignee and the charges be "collect" the frank is just as potent a factor in getting the goods from the company without passing the coin as in the first instance. But there are franks and franks, in the express business; some are of the nature of annuals, some are equivalent to a stated number of shipments or value, others are special and apply only to a particular shipment. Franks, it is believed, are granted for much the same reasons as passes have been; they are equally as pernicious and smack of the same graft.

Contract Between an Express Company and a Railroad Company

The usual form of contract between an express company and a railroad company contains the following conditions: (a) That the railway shall transport in cars or car compartments, which it will properly light and heat and attach to its passenger trains each way daily, the messengers, safes, packing trunks and express matters of the express company to all points upon its lines which the railroad owns or may hereafter own during the term for which the contract is made; (b) the term "messenger" is made to apply to all persons accompanying the freight and valuables of the express company and are carried free; (c) the express company is given free approach and access to all depots, stations and trains, and allowed a reasonable time to load and unload express matter; (d) a certain part of each station and depot is set apart for the use of express matter, and the express company is permitted, with the consent of the railway, to employ such of the latter's agents and employees for the transaction of express business as it may find necessary, but for the acts of such agents, while transacting express business, the express company is liable; (e) all equipment belonging to the express company, such as horses, wagons, safes and material necessary to be used by the express company, is transported by the railroad free. Under this agreement it has frequently been the practice for express companies to buy forage and other products at point of origin and send them to various places, even in carload quantities, without any payment for freight; (f) the railroad company agrees that neither it nor any of its employees shall transport money, valuable packages, goods or merchandise on passenger trains except regular passenger baggage, and supplies for the railroad company's use, and dogs when accompanied by owners; (g) the contract with the particular express company is an exclusive one. A railroad company binds itself not to permit other express companies to do business over its lines; (h) if the railroad company shall be compelled by judicial determination to grant to any other express company transporta-

tion facilities, the revenue derived therefrom is to be credited to the express company party to the agreement, and the compensation which the railroad is to receive from the other express company is not to be less than that which the express company party to the agreement is to pay for the same service; (i) the express company accords to the railway company free access to its books, records and accounts for the purpose of verifying the compensation to be paid; (j) the express company assumes all risks and damage to the property intrusted to it and also risks and damage to its agents and messengers in the course of their employment, if the damage arise from the negligence or carelessness of the agents or employees of the railroad. If one person act as both baggage master and express messenger and he be injured, the amount contributed by the express and railway company is based upon the proportion which they respectively contribute to his salary; (k) the express company transports money and valuable packages belonging to the railway company free of charge and delivers same as other express matter; such transportation is, however, subject to the express company's usual form of receipt. If packages belonging to the railroad company do not exceed a certain minimum, usually 20 pounds, they are transported by the express company on lines reached by it, but beyond the line of the railway party to the agreement, for 75 per cent. of its regular rate on such shipments; (l) it is provided that there shall be a fixed relation between freight rates and express rates, the express company agreeing that its rates shall never be less than $1\frac{1}{2}$ times the railway company's freight rate per 100 pounds on the same commodity between the same points, unless the traffic manager agree to another schedule; this is also further subject to the provision that the express company may make such rates as it pleases in order to keep business to competitive points.

How the Public Is Interested

In such a contract as this the public have concern in three matters: First, the rate which the express company pays the railroad—usually 40 per cent. of the gross receipts. Second, that stationery and other material for the railway's use upon the company's line is transported free of cost; and if transported off the company's line, then at 75 per cent. of the tariff rate. Third, the express companies make such rates upon a particular commodity that the express rate will bear not less than a certain fixed relation to the freight rate.

The last arrangement clearly indicates, when one considers the rates, one cause of the exorbitant charges. The first class freight rate from Chicago to New York is 75 cents per 100 pounds. Such rate covers fresh and frozen fish, cigarette paper, fly paper, cattle powders, typewriters, crated or boxed—all in less than car lots. The rate on any of these commodities from Chicago to New York, if by express, would take merchandise rates, namely, \$2.50 per 100 pounds. This express rate is three and one-third times the freight rate. If the stipulation of the usual express contract,

that the express rate shall not exceed one and one-half times the freight rate on the same commodity, is considered reasonable, then anything over that would amount to extortion. In the additional charge per 100 pounds Chicago to New York the "velvet" to the express company is \$1.12. This, of course, is upon the assumptions, first, that the first class rate, Chicago to New York (75 cents), is reasonable; second, that the reasonable express rate, as determined by the competent officials of the railroad and of the express company, would be $1\frac{1}{2}$ times this rate.

In Conclusion

Resuming what has been brought out by this series of articles, it is safe to conclude that, while the express companies have performed most important duties in connection with the commercial development of this country, while they deserve credit for taking up a class of business which was despised at first, nevertheless the

facts remain that their classification is crude, inequitable, full of inconsistencies, unjust and prejudicial to various commodities; that their rates are not based upon any system, reason or logic, but, on the contrary, are the results of a commercial zeal to assess "all that the traffic will bear" in its most invidious sense; that its through contracts of carriage are to a marked degree all of the "meat ax" variety; that the enormous amount of business transported by them is paid for by the shipping public at prices which make their services burdensome; wherever an express company has found a chance to compete in any class of business, as it does with the Post Office Department, it makes rates which secure the tonnage; where, on the other hand, there is no competition of other transportation agencies, it makes rates which are beyond the purview of the term extortionate.

All in all, the express business, as conducted today, is about our greatest octopus.

What Do Shippers Get From Freight Money?

BY COL. S. RICE

THE writer was quite disgusted, a few weeks ago, to be told by the shipping clerk of a small manufacturing company that he would send a tracer after certain goods (which constituted a full carload), but would probably not be able to obtain any report on the shipment until it had arrived at its destination. He had an idea that a tracer "might hurry up the car some," but declined to commit himself even on that point.

Now, it was important for us to know definitely whether or not that car could be depended upon to reach the consignees by a certain date. In all probability it would arrive on time; but that wasn't the point. We wanted to keep informed of its movements, so as to be able to make emergency arrangements in case of any unlooked-for delay. Accordingly, we wired our representatives at traffic headquarters, which happened to be on the route of the shipment in question, giving them its point of origin, car number and initials and date of departure, and forwarded a copy of the B/L by mail. Our instructions were to have the car located at once and followed up by wire tracers until it reached its destination. The result was that they, not having any hazy ideas as to what could be done with a tracer, took the matter up with the proper official at the freight office, secured without difficulty his cheerful co-operation, and after a few days reported the shipment delivered to consignees. Meanwhile, its whereabouts had been known, so that we had no anxiety regarding it.

Shippers at the Mercy of Chance

This little incident caused me to wonder how many shippers there are in this country as fully at the mercy of chance, in respect to the movement of their consignments, as the company whose traffic man could only "guess" what result a tracer might have. It certainly

explained, in large part, why that particular company has difficulty in making deliveries as promised. Apparently they exercise no control of shipments while in transit.

It used to be the rule rather than the exception for manufacturers and other heavy shippers to spend large sums of money in *producing* goods, only to leave their *delivery* in the hands of low-salaried clerks, or employes of any sort sufficiently intelligent to order cars and make out shipping bills. Fortunately, that condition is changing, in part. Well organized traffic departments, managed by ex-railroad officials and others thoroughly acquainted with transportation matters, are now regarded as a necessary *and paying* constituent of every large establishment; but for the smaller companies, firms and individuals scattered throughout the country, whose aggregate volume of shipments far exceeds that of the "big fellows," there is still much need of improvement.

The first essential for this is thought; the second is action in accordance with it. Every shipper should ask himself—not once, but often: "Am I getting the best return that it is possible for me to obtain from my expenditures for transportation service?" The man who has never thought of doing this is the very one who will go exhaustively into the matter of fuel costs or steam economy—simply because the enterprising representative of the "Peerless" Engine Company, or some other pushful concern, has hinted that he is not deriving the full benefit to be had from his coal pile, and is ready to tell him why. The railroad companies and steamship lines have no agents whose business it is to instruct shippers in matters of this kind. It would be to their undoubted interest to do so, for the more a shipper gains from his business the more he can "spread

out," and the greater becomes the volume of his shipments; but you can't expect transportation officials to see that. They are too busy devising new means for securing "all the traffic will bear"—which, by the way, is a very delusive idea.

Freight Money and Dividends

Therefore, the shipper must find out for himself what he can do to make his freight money pay the heaviest dividends. If he can afford to employ a competent traffic manager, he will find it to his profit to do so. If not, he must piece together the fragments of his own experience, draw from the knowledge of his associates, and look to the columns of *FREIGHT* for helpful suggestions. Most of all, however, he must *apply* the things he learns or whatever is evolved from his inner consciousness.

Then, too, he should endeavor to bring about the fullest possible measure of co-operation between himself and the railroad officials with whom he has to deal. As a rule, the latter will be found ready to meet him half way on any reasonable proposition within their jurisdiction. The matter of tracers is only one of a thousand in which their friendly assistance will be of value to him, if it is not abused. The latter, however, is a point deserving of consideration.

To use tracers further as an illustration: Some shippers, having learned the value of these little scouts, literally work them to death. They ask to have cars traced, in season and out of season, until the railroad

clerks become disgusted and make no more than a pretense of complying with their insistent requests. On the other hand, the shipper who only traces for delayed cars or asks to have consignments "followed up" when there is urgent need of prompt delivery, finds that he can rely upon cheerful and effective acquiescence from employees of the carriers.

A Matter Requiring Tact

The cultivation of friendly relations with railroad officials—that is to say, with the men upon whom a shipper must depend for co-operation—is a matter requiring tact. Now, "tact" is simply the short expression for "put yourself in his place" actively carried out. Shippers should learn to recognize and respect the rights of these servants of the carriers and to refrain from saddling upon them the faults of a *system*, which, from its very complexity, is naturally defective. If approached in the proper spirit, the average railroad man will respond quickly to any proper request on the part of a shipper, and to one whom he regards as a friend he will volunteer much information of value. The writer, in an active experience of ten years with transportation problems, never had but one serious difference with a railroad official, while he is indebted to the "boys" for scores of unsolicited favors tendered during the ordinary course of business.

In traffic matters, as in all others, it pays to be wide awake, unprejudiced and courteous.

Subscribe for *FREIGHT*; \$3 a year.

GRAIN DEALERS AND DEMURRAGE

President Henry L. Goemann, of the Grain Dealers' National Association, recently appointed a demurrage committee consisting of these members: C. A. Burks, managing editor of the *Hay and Grain Reporter*; E. W. Seeds and G. A. Stibbens. This committee has issued the following letter, which is self-explanatory:

DECATUR, Ill., October 3, 1906.

To Shippers and Receivers:

The secretary of the Interstate Commerce Commission suggests "that we get specific cases, in which alleged improper demurrage charges, or alleged improper rules or regulations made respecting demurrage have been published. Also, suggestions with respect to desired changes in rules, regulations and charges," and for this reason, as well as many others, you will kindly be as specific as possible in answering the following interrogatories, giving the incident as fully as possible, as well as correct movement, day, date, etc. If you do not find source enough to give as complete an answer to any questions asked as you think the questions warrant, please use extra paper, giving number, or quoting question before giving your answer:

1. What car service have you paid during the past two years?
2. Was the delay caused by you, or was it the fault of the railroad company?
3. How much free time were you given, in which to load and unload cars?
4. What demurrage rule is being enforced at your stations that you think is unjust and unreasonable?
5. When cars are ordered for loading, do you receive them promptly?

6. Are cars taken from your side track promptly when loaded?

7. Do your cars arrive at their destination in a reasonable length of time after having left your stations?

8. Do you favor reciprocal demurrage?

9. Do railroad agents fail to file your order for cars?

10. Do you file your orders for cars in writing?

11. Have you suffered any losses during the past two years on account of the railway's delay in the shipment of your grain or hay?

12. What suggestion or advice can you give this committee that you think would assist them in securing better and prompter railway service?

Fill out and mail to C. A. BURKS, CHAIRMAN DEMURRAGE COMMITTEE, GRAIN DEALERS' NATIONAL ASSOCIATION, DECATUR, ILL.

The FREIGHT CLAIM INDEX AND RECORD, by W. R. Campbell, published by the FREIGHT PUBLISHING COMPANY, No. 116 Nassau Street, New York, will be found indispensable to every shipper after it is once placed in use. Price \$5.

Bankers Ask for a New Bill of Lading Law

At the convention of the American Bankers' Association at St. Louis, October 17, 18 and 19, the following report of the Committee on Bills of Lading was read by Lewis E. Pierson, president of the New York National Exchange Bank:

Immediately after the appointment of your committee last November, its chairman advised the chairman of the Joint Committee of Carriers and Shippers of our desire to confer with his committee, which, at the instigation of the Interstate Commerce Commission, had for over a year been formulating a new uniform bill of lading, and in response we were advised of a previous agreement in his committee not to admit outside interests to their conferences.

With a view of making our position clear, our first meeting was held in December at Lakewood, N. J., during a meeting of the joint committee at the same place, and a formal communication was addressed to that committee, advising our appointment, its purpose and our desire to participate in their conferences, in view of the vast responsibility banks were assuming in advancing large sums on bills of lading as collateral, and their anxiety to bring about conditions under which it would be safe to continue such advances.

We were afforded an informal hearing and in the brief time allowed, presented our case, urging the importance of our position not only to the banks, but to the shipping interests of the entire country, only to be again informed, for reasons which they deemed proper as being likely to enable them to make greater progress, that an understanding had been established between the members of the joint committee that other interests would not be admitted to the conferences until they had reached some conclusion between themselves.

Our own meeting at Lakewood continued for two days, and we had the opportunity of discussing with individual members of the joint committee the features of bills of lading in which bankers are interested, calling their attention to the many weaknesses of the document which apparently had never before been impressed upon them, and insisting that practically all the losses of bankers on this class of business were due to lack of definite and uniform legislation defining their negotiability, as well as to loose and careless methods of issue and redemption.

As a result of this informal discussion your committee was convinced that the real conditions affecting banks loaning on bills of lading, and their importance, were not well understood by the shippers and carriers, and promptly decided that the importance of the matter demanded immediate publicity and educational methods, if corrective conditions were ever to be obtained.

Learning that the joint committee was practically deadlocked on the most important point of difference between the two interests, and fearing an indefinite delay in their further negotiations, it was determined to inquire from our members their actual experiences and suggestions, and through counsel frame a bill for Congress to pass, believing rational legislation would afford relief quicker and with more widespread effect than any other course of action.

Accordingly the services of Thomas B. Paton, editor of the *Banking Law Journal*, generously and gratuitously extended, were accepted, and for the purpose of drafting such a bill he was associated with R. E. L. Marshall, of the Baltimore bar, who had recently been through a long litigation on this subject.

Our second meeting was held in Chicago in February, at which time the conditions and suggestions received in response to our inquiries were considered, and with some changes the draft of the bill prepared by Messrs. Paton and

Marshall approved; our committee at this meeting having the benefit of the presence and advice of your president.

While in Chicago we informally met individual members of the shippers' committee and discussed with them the features embodied in the draft of the bill drawn by our counsel, and during the interval between the Lakewood and Chicago meetings, the carriers, through one of our committee, were informed of the lines upon which our work was progressing; and in the hope that support or effective criticisms might be had on the measure, copies of the draft of our bill were forwarded to the carriers' committee with the request that their body meet a sub-committee of our committee to consider the same. Such meeting was accordingly held in New York, and much to our disappointment we found the same obstacles previously encountered excluded the carriers from even discussing the merits or demerits of our bill, which had been carefully drawn so as to include only the banking features in bills of lading.

In view of this situation there appeared to us to be no relief possible except through pushing our bill, which was accordingly introduced in the House by the Hon. C. E. Townsend, of Michigan, as No. 15,846, and in the Senate by the Hon. J. C. Burrows, also of Michigan, as No. 4,810, and copies with a letter urging support were sent to each member of our association.

Our fourth meeting was held in Washington in March, at which time a hearing was had upon the bill before the House Committee of Interstate Commerce, a full attendance of that committee being present. We were pleased to note a marked impression upon the members of this committee as to the importance of the measure, arguments in its favor being made by William Ingle, cashier Merchants' National Bank, Baltimore, Md.; C. N. Evans, cashier Southern National Bank, Wilmington, N. C.; Thomas B. Paton, *Banking Law Journal*, New York City; Charles Corby, president Corby Commission Company, New York City, and Fred. C. Aplin, vice-president J. K. Armsby Company, New York City, the hearing also being attended by a number of bankers and shippers from various parts of the country.

At the conclusion of the hearing, the chairman of the carriers' committee appeared, and after opposing certain features of our bill, stated it was possible that a final agreement would be reached in the joint committee on all points of difference, at a meeting soon to be held, and that it would be their purpose in that event to invite the bankers into conference on the banking points, with an idea of embodying all points of agreement into one bill to be passed by Congress.

On this public representation it was deemed best for the time being not to further push our measure, but to again endeavor to reach a common ground for the three interests, believing, as we had from the beginning, that the ideal solution of the subject was the one to which the chairman of the carriers' committee had thus raised our hopes.

Our fifth meeting was held in New York City early in May, at which meeting we were favored with the presence and valuable counsel of Orville Peckham, attorney for the First National Bank of Chicago, and consideration was given to several points of objection directed against our original measure, which while of minor importance to bankers might be fairly construed as putting hardships upon the carriers, and a draft of a new bill was formulated and sent to shipping associations throughout the country for criticisms and suggestions, with an idea of keeping the matter alive and endeavoring to meet every fair objection that could be raised against the banking points we were endeavoring to cover.

At this meeting the committee informally met the chairman of the carriers' committee and drafted a letter to the

joint committee to the effect that should an agreement among themselves not be reached at their next meeting, they appoint a sub-committee to take up with our committee the banking phases, so that progress might be made.

Although this request was made early in May, and personal requests have since been made for this meeting, we received no reply until October 3, when the following letter was received from the chairman pro tem. of the carriers' committee, which, although couched in courteous terms, certainly shows no particular enthusiasm to meet our committee, and also still leaves the time they may be ready to meet us very indefinite:

"This will serve to confirm the telephone message which I sent you last Saturday morning on behalf of Chairman McCain, of the Bill of Lading Committee, and to the following effect, namely, that the desire of the bankers' committee that efforts should be made at the next joint meeting of our bill of lading and shippers committee, to reach an understanding whereby there might be an early opportunity afforded the bankers' committee to confer with our joint committee or sub-committee thereof, was presented to our meeting, and it was the sense of the meeting that it would be entirely proper to present the matter at the next meeting with the shippers, with a view to reaching an understanding which would have the effect of compliance with your request.

"As further explained to you, it is expected the next meeting with the shippers will be held about the last week in October. The chairman of that meeting will doubtless advise you of any action taken thereat with respect to matter referred to."

Congress, however, in June passed the Rate bill, which included a bill of lading clause, holding the initial carrier liable for all damages caused by the carriers, and which clause appears to have secured for the shippers practically all they were contending for in the joint conference.

The sixth meeting was held in St. Louis this week, when consideration was given to various matters which had developed since our previous meeting.

While various shipping associations throughout the country have generously offered their co-operation in our work, your committee has refrained from contracting any alliance with either shippers or carriers, however advantageous at the moment such a move might have appeared.

In the latter part of August, in behalf of the Bill of Lading Committee and your Committee on Legal Decisions, Thomas B. Paton attended the session of the Commissioners on Uniform Laws, held in St. Paul, which body has been drafting a uniform act on bills of lading, which upon completion, not possible for another year, they propose to recommend for adoption throughout each of the several States.

In order that their work upon this and other banking matters might be in co-operation with our own and other banking associations, at the suggestion of Mr. Paton they amended their by-laws so as to provide for a standing committee on banks and banking, whose appointment, no doubt, will be of material benefit, not alone in the bill of lading matter, but in all present and future banking matters needing uniform legislation.

Conditions Found

In response to our inquiries, it was shown that banks were annually advancing \$2,500,000,000 on bills of lading; that crops in certain sections of the country were almost entirely financed through this medium, and in spite of the fact that banks are loath to acknowledge losses, a condition which makes the gathering of anything like complete statistics on this phase impossible, there were reported to your committee hundreds of individual losses ranging as high as \$320,000, and it was clearly intimated to us that a large number of institutions never have and never will loan on the

present form of bill of lading, claiming the risk to be too great.

The causes for these losses have almost invariably been through fraud, made possible through the lack of uniform and definite legislation, the looseness of the document itself, and the many exemptions from liability inserted therein by the carriers, as well as the present method employed in their issue and redemption, hundreds of deliveries of goods without surrender of bill of lading being reported, where no actual loss occurred.

The specific causes for loss were found to be—

First—Issue of bill of lading without receipt of goods.

Second—Delivery of goods without surrender and cancellation of documents.

Third—Altered bills of lading.

Fourth—Forged bills of lading, including change of genuine straight to forged order bill.

Fifth—Issue of duplicate bills of lading, original bill still outstanding and uncanceled, and shipments being diverted.

Sixth—Liability imposed by courts for quantity and quality of shipments.

Existing State laws have been inadequate to protect holders of bills of lading against these losses. Such documents are not fully negotiable at common law, nor have they been so made by conflicting State statutes designed to confer negotiability upon them. The decisions of the various State courts upon many points of liability are also found to conflict. In short, neither the statute nor common law, as interpreted by different State courts, affords to the holders of bills of lading taken as security for advances, the protection or safeguard to which they are justly entitled.

Three serious situations were also brought to our attention; the first, covering lake bills, which for years have carried a clause, "Care Consignee, say John Smith, Buffalo," and upon arrival at Buffalo the receipt from John Smith has released the lake carrier from all liability. This care consignee is, in 80 per cent. of the cases, the direct agent of the shipper, who has borrowed on the bill of lading from his home bank, and who through his agent, this care consignee, again comes into possession of the goods, although the bills of lading representing the same are still unsurrendered and held as collateral by the home bank.

The second is where goods are shipped by large operators from side tracks located some distance from railroad stations and where "shipper's load and count" is stamped on the bill of lading by the railroad agent, in view of his inability to be present as the goods are loaded on the cars.

Loans on documents so issued cannot but be most hazardous, as recent decisions hold that railroads are not responsible for acts of their authorized agents in issuing bills of lading, wherein goods are not actually received.

Not alone is this true where contents of packages do not correspond with description in the bill or where goods have been loaded, counted or weighed by the shipper, and the issuing agent has no opportunity to know whether the description in the bill is true or false (in which case there is some reason for exempting the carrier from liability), but also where the bill has been issued fraudulently by the freight agent, or as the result of mistake, neglect or carelessness, the courts have held the carrier not liable for the acts of its agent in issuing a spurious or untrue bill.

The third is that the highest courts in three States have decided that in cashing and collecting drafts to which bills of lading have been attached, bankers were responsible for the quantity and quality of the shipment represented, thus, in effect, making the bank, which simply holds the bill as collateral, an insurer of the goods for the consignee; these decisions having caused a number of bankers, under the lead of the First National Bank, of Birmingham, Ala., to notify their customers that they will no longer take bills of lading under old conditions.

In February of this year, in view of the grave dangers exposed through our investigation and an adverse decision against one of its members for a large amount, the Baltimore Clearing House banks seriously considered the advisability of taking a united stand against handling bills of lading, except under certain stringent conditions, and we learn of other bankers throughout the country who are favoring such action. To all of this your committee, however, has counseled patience in the hope that relief will soon be at hand.

This belief, we believe, can only properly come through Congressional action, as in the case of the Harter act, adopted in 1893, covering ocean bills, which is a direct precedent, and as no agreement between shippers and carriers can make a bill of lading a negotiable instrument.

The Harter act was the outgrowth of a controversy between shipowners, shippers and underwriters over the liability of carriers on ocean bills, a condition existing because the courts of different States had announced conflicting rules upon the subject in controversy. It therefore became desirable, and the result proved highly beneficial to all interests, that Congress, which, under the Constitution, has supreme authority over foreign and interstate commerce, should interfere, and by statute establish a rule binding upon the courts. The conflict of laws in the different States being one of the reasons most influential for the enactment of this law.

For like reasons, legislation by Congress to confer negotiability upon domestic bills of lading and clearly define the rights and obligations of parties thereto, is equally necessary to give such bills a uniform and definite legal character and value as commercial documents of title and to overcome the unfair decisions to the effect that a railroad is not responsible for the acts of its authorized agents, as well as those decisions holding bankers responsible for the quantity and quality of goods represented by bills of lading attached to drafts cashed by them.

Your committee has been informed that the order clause in domestic bills of lading was never designed for the purpose of protecting loans made on such documents, but was inserted at the instance of large shippers who desired control of their goods until drafts drawn against such shipments had been paid, and the custom of loaning on domestic bills of lading has resulted from a desire on the part of banking institutions to accommodate shippers in the height of their season, the bills originally being accepted more as evidence of shipment and good faith than as security.

This custom has been followed by other institutions lacking knowledge of real conditions, but believing the documents to be good collateral through experience with ocean bills of lading, without giving thought to the careful system in vogue in the offices of the ocean shipping companies, as well as to the fact that ocean bills are accompanied by insurance papers, and that the ocean carrier's liability has been fixed by the Harter act.

Since 1893, when Congress passed the Harter act, the confident purchase of drafts against ocean bills has been the means of greatly stimulating our export trade, which is almost entirely financed through the sale of drafts to which ocean bills of lading are attached.

National legislation on domestic bills of lading would vastly benefit our interstate commerce, as where advances on these documents are now avoided, they would be welcome, and the free movement of commerce throughout the United States would be facilitated beyond calculation.

Congress has paved the way by its enactment of the Harter act and the further enactment, at the last session, of a clause in the Rate bill imposing certain liabilities upon carriers issuing domestic bills of lading, and has thereby announced its position and duty, under the Commerce Clause of the Constitution, to make such legal regulation of both

ocean and domestic bills of lading as commercial necessities require.

Congress has begun the work, but has not completed it. It has regulated the matter of liability under a domestic bill of lading between the shipper and the carrier, but has left untouched the equally important matter of the assignability of these documents.

The bill of lading is no longer a document requiring regulation between shipper and carrier alone; a third element has entered as a necessary factor in the problem, and the pledge of these documents to bankers as collateral for advances is a vitally important part of our interstate commerce; as such, the rights of the assignees of these bills is a subject as necessary for clear definition and legislative regulation as are the respective rights and obligations of the original parties, the shipper and the carrier.

The great importance of this question to bankers all over the country has been well illustrated in the proceedings of the State associations during the past year, many addresses clearly and effectively presenting the grave dangers existing in the present order bills of lading as collateral having been delivered, and practically every association has passed resolutions calling upon the American Bankers' Association to continue its efforts to bring about corrective conditions.

We, therefore, recommend that there be presented to Congress, in December, amendments to the Rate bill, to follow the existing bill of lading clause, that will provide negotiability for bills of lading when issued in negotiable form, and also define the rights and liabilities of the parties thereto to the extent necessary to safeguard the reasonable rights of those advancing value upon such documents, with due regard to the nature of the business and the relation, rights and duties of the carrier.

LEWIS E. PIERSON,
WILLIAM LIVINGSTONE,
FRANK O. WETMORE,
J. A. LEWIS,
WM. INGLE,

Committee.

ASSUMES LOSS BY FIRE

Important action has recently been taken by the Canadian Pacific Railway Company, by which that carrier assumes all liability for loss, damage, or injury to property entrusted to it when the cause of the loss, damage, or injury is fire. This company has recently taken out a blanket policy of insurance by which all property entrusted to it is covered, and the carrier has announced that it will hereafter assume the common law liability of a carrier as an insurer of freight against fire. This insurance covers all traffic which is in the carrier's possession, either as a carrier or a warehouseman. Hereafter claims for goods damaged or destroyed by fire will be paid upon the usual proof of loss. The position now assumed by the Canadian Pacific goes further than even the common law liability of a carrier, because it holds itself responsible for fire caused by the act of God.

This action renders far less difficult the task of modifying the Canadian bill of lading, and it is predicted that in a short time the shippers and carriers will be agreed upon the form and contents of the shipping document.

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WE maintain a legal department through which subscribers may be legally advised concerning their rights against carriers in the matter of discriminations, or unjust or unreasonable rates or practices. No expense will be incurred by subscribers, as **FREIGHT** will pay for the initial service. If, however, rights have been infringed, our attorney will conduct cases, if subscribers so desire, at a moderate cost. Write the case out fully and forward to Department C, care **FREIGHT**, 116 Nassau street, New York.

FREIGHT has established a Bureau of Complaints and Grievances. It invites correspondence from subscribers. The Bureau is conducted along broad and comprehensive lines. A traffic expert of long experience replies to knotty questions regarding transportation affairs, and gives opinions as to the rights of shippers and carriers.

All classes of complaints should be made to **FREIGHT**, the Editor asking only that the grievance be explained in detail and specifically.

Subscribers who do not receive their copies of **FREIGHT** promptly each month will oblige the publishers by acquainting them with that fact without delay.

WHILE the columns of **FREIGHT** are open to a full and free discussion of traffic questions of all kinds by both shippers and railroad men, the Editor should not be held responsible for views expressed in communicated articles.

UNLESS **FREIGHT** is very much mistaken, there is an era of tribulation ahead of the express companies. Entirely apart from what the Interstate Commerce Commission may see fit to do with them in the matter of tariffs, a very profitable branch of the business is threatened by the American Bankers' Association.

Bankers to Wage War on the Express Companies At the recent convention of this association in St. Louis, the following resolution was unanimously adopted:

"Whereas, The express companies of the United States have been, and now are, illegitimately engaged in the banking business, to the great loss and detriment of all regularly organized banking institutions, and

"Whereas, In the carrying on of such business, because of their dual nature as express companies and bankers, they are enabled to make rates that prohibit regular bankers from competing for business that legitimately belongs to them, and

"Whereas, The Fifty-ninth Congress, in an amendment to an act, entitled 'An Act to Regulate Commerce,' has placed the said express companies under the jurisdiction of the Interstate Commerce Commission, and

"Whereas, They are now subject to the interstate commerce law, and are daily transgressing said law in the carrying on of two lines of business, which, in effect, rebate against each other; therefore

"Be it resolved, That the Executive Council of the American Bankers' Association appoint a committee with power to act, whose duty it shall be to gather evidence of the breaking of the interstate commerce law by the express companies and place same before the Interstate Commerce Commission, with the avowed intention of compelling said express companies to discontinue the banking business; furthermore, that the Executive Council of the American Bankers' Association be authorized to place such funds as they may deem advisable in the hands of the aforesaid committee for the purpose of collecting and presenting such evidence."

This resolution was introduced by E. D. Durham, of Onarga, Ill., and in advocating its adoption he said:

"I do not think it necessary, gentlemen, to offer any arguments in behalf of that resolution. I will merely state one case. My friend, Chandler Starr, of the Winnebago National Bank, Rockford, Ill., informs me that an express company's office is immediately across the street from his bank; that it is their custom when money orders are presented for which they have not the funds to send over to his bank and ask him to cash them, and remit to the Chicago correspondent in the regular way. Then they merrily charge him 40 cents a thousand for getting his money back from that city. You understand that these resolutions have not been hastily written, but they have been carefully prepared and they have the sanction of no less a person than the Attorney-General of the United States to the extent that it is his opinion that we are entirely in our rights in demanding this legislation. Mr. President, I move the adoption of the resolution."

FREIGHT is not prepared to say whether or not the express companies are within their legal limitations in apparently usurping the rights of banking institutions. There is this much to be said, however: A bank is obliged to incorporate under the laws of a State or of the United States, and is subject to either State or national supervision. It is called upon to keep a reserve to protect depositors and to pay taxes to the State. The American Express Company, as a banker, does none of these things. In addition, it has nine thousand branches, the kind of organization not permitted banks. Another discriminatory point is that the express companies are authorized to charge banks for expressing currency, say between New York and Chicago, 50 cents per thousand, but they can ship currency between these points for themselves as foreign exchange bankers for nothing, thus making it possible for them to alternate transactions between New York and Chicago, eliminating the 50 cents per thousand difference which other banks are obliged to figure on. It is further charged that the American Express Company is in conflict with the spirit of the Interstate Commerce Law in the conduct of its foreign exchange banking business.

The committee to wage this war on the express companies has already been appointed by the executive council of the American Bankers' Association. Its chairman is Fred I. Kent, of the First National Bank, Chicago.

The express craft, which hitherto has had smooth sailing, is about to enter troublesome waters. Its pilots will be compelled to spend many hours on the bridge and study the public barometer much more carefully than they have in days gone by.

No one familiar with interstate commerce matters can fail to notice the apparent lethargy of the users of transportation. There seems to exist a feeling that all that was necessary was to secure an amendment to the law; that thereafter the situation would take care of itself; that discriminations would immediately be rectified; that unreasonable rates would be made reasonable; that practices which had become abuses would be abolished; that no practice, however inequitable and unfair in its nature, would be inaugurated. Nothing is further from the truth. There is always something more to do than to enact a statute. The law must be executed and enforced. It is necessary that there should be undertaken by those who know of the discriminations proceedings to notify them; it is necessary to call the attention to those charged with the interpretation, execution and enforcement of the law to the practices which are prejudicial or unduly preferential.

Shippers Must Make Their Grievances Known

It is true that a considerable number of complaints have been filed. These, in general, refer to personal and individual discriminations, while some few raise

the questions of discriminations against localities. While the number is large, it is not at all commensurate with the abuses which ought to receive immediate consideration and rectification.

Recently a few of the carriers made application to the Commission in a matter of the utmost importance. Practically every carrier in the United States was represented; the shipping interests were not represented save by two organizations, neither of which could be said, in the strict sense of the term, to be national in its scope.

If the shippers desire that the Commission shall know their feelings and their wishes concerning the enforcement of the Interstate Commerce Law, it is necessary that the Commission shall be advised. The Commission should not be considered as the paid advocates of the shippers. While in a sense they represent the public, a part of that public are the carriers. It cannot be expected that the interests of the users of transportation can be protected when those interests are silent concerning their rights.

THE order bill of lading, which is a necessity in the present way our commerce is conducted, is nevertheless the cause of considerable trouble both for the shipper and for the carrier. It not infrequently happens that goods shipped "to order" are delivered by

Abuse of the Order Bill of Lading

the agent at destination to a notify party without the surrender of the bill of lading. Under such circumstances the carrier is obligated to pay to the consignee the value of the goods; it may happen that the notify party is financially irresponsible, and therefore the carrier has placed upon it an undue burden. There have been instances where the agent of the carrier has been a silent (but active) partner of the notify party and a division of profits has been very remunerative, for a half carload of merchandise taken once a month or oftener, as required, adds materially to the income of the agent whose salary is \$50 per month.

Such action, which is not too infrequent at the present time is, in many States, not punishable under the criminal law. The laws of West Virginia, however, provide adequately for such cases by denominating such action larceny, and providing an appropriate remedy therefore. Other States can profitably pass similar laws.

The code of West Virginia, section 4,258, provides: "If any * * * agent, clerk or servant of any firm or person or association of persons not incorporated, embezzle or fraudulently convert to his own use, bullion, money, bank notes, security for money, or any effects or property of any other person, which shall have come into his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be deemed guilty of larceny thereof."

Another section of the law of West Virginia appli-

cable to cases of this kind, being section 4,259, reads: "If any carrier, or other person to whom money or other property which may be the subject of larceny may be delivered to be carried for hire, or other person who may be intrusted with such property, embezzle or fraudulently convert to his own use or secrete with intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place at which, or to the person to whom, they were to be delivered, he shall be deemed guilty of larceny thereof."

The punishment for larceny where the value of the property is \$20 or more is imprisonment in the penitentiary for not less than two years or more than ten years. If the value of the goods is less than \$20, the punishment is imprisonment in the jail for a period of one year.

Mr. Hearst and the New Rate Law

FREIGHT is not concerned with partisan politics, but the mendacity of William Randolph Hearst in the campaign for the Governorship of New York demands a little attention from us. In his speech at Madison Square Garden on the evening of October 22 he is quoted by his own newspaper, the *New York American*, as having said:

"Then I fought the Coal Trust and compelled Divine Right Baer and other coal road presidents to produce in court their criminal contracts, and as a result of this fight I introduced a bill in Congress to give power to the Interstate Commerce Commission to fix railroad rates. This bill the Republican party two years later stole and passed and takes the credit for."

A shorthand report of what Mr. Hearst said reads:

"Then I fought the Coal Trust, and we dragged Baer and the other Coal Trust presidents into the courts and made them confess their criminal contracts.

"And then, having that experience, they formed an Interstate Commerce Commission; and I introduced a bill in Congress to give that Commission power to fix railroad rates. And the Republican party, two years later, stole that bill, and passed that bill, and claims credit for that bill."

Any person who, however casually, followed the trend of events which led to the enactment of the so-called Rate Law of 1906 knows that Mr. Hearst was not even remotely responsible for the legislation or the agitation which preceded it. He did introduce two bills, one on March 11, 1904 (H. R. 13,778) and another on December 4, 1905 (H. R. 469). Neither one, however, commanded anything more than passing interest. In fact, when Mr. Hearst was summoned before the House Committee on Interstate and Foreign Commerce his lack of knowledge of the provisions of his own measure was only slightly less amazing than his lack of knowledge of the subject as a whole. He was as helpless as a six months' old baby without its nurse.

The first movement of consequence having for its purpose the amendment of the Interstate Commerce Act, vesting the Commission with greater powers, was the Interstate Commerce Law Convention, held in St. Louis November 20, 1900, led by E. P. Bacon, of Milwaukee. The Corliss-Nelson bill, introduced at the

first session of the Fifty-seventh Congress, early in 1902, was the result of the St. Louis convention.

This was just two years before Mr. Hearst arose to the emergency, and nothing contained in either of his bills found its way into the Interstate Commerce Act.

THE recent letter from certain colored citizens to the Interstate Commerce Commission, wherein they complain of discrimination in the furnishing of passenger cars, means more than appears upon the surface. The letter not only states that they are given, under the Jim Crow Laws of the various States, cars inferior in their appointments, but that the writers are without means to prosecute the carriers. The writers have been informed that the Commission has jurisdiction in such cases, and ask that they take cognizance and determine the merits of the complaint.

Wherein the New Rate Law Is Weak

These writers are not the only persons who conceive themselves to be discriminated against, and at the same time find themselves without adequate means to carry on a proceeding before the Interstate Commerce Commission. The number of small shippers who have not the means wherewith to compel obedience to the law is legion. The number who hesitate to bring a proceeding, although they have the means, is not inconsiderable; they hesitate because of the power of the defendant, and because anything which they might expend as complainants, and any result which they might obtain, will be for the benefit of others similarly situated. The expense of conducting public matters ought to be borne by the public and not by an individual.

It is passing strange that nothing has been recently given out concerning the investigation of the Pennsylvania Railroad employees by the board of directors. Some action of indifferent nature was taken early in the investigation; some rules concerning the disposal

of stocks and bonds in shipping companies held by employees were promulgated. **FREIGHT** predicted too well when it prophesied that the broad mantle of charity

would be thrown over a long and efficient service. Charity has not been necessary, largely because the board of directors and the public have allowed the subject to drift idly along until it appears to be in a hypnotic state. It is certainly due to those employees of the Pennsylvania who have been honest that the public should be advised of their names. That such officials exist we have no doubt; we are equally certain that there are other officials than those who have received punishment in various ways who deserve to have condemnation by the publicity of their sins, to say nothing more.

Every traffic manager should have a FREIGHT CLAIM INDEX AND RECORD. It saves time and money. Price \$5.

Does the New Law Apply to Foreign Commerce?

BY E. G. COX

THE recent order of the Interstate Commerce Commission concerning export rates on cotton and other commodities has been the subject of no small amount of comment. The basis of the order is, in reality, the first interpretation of the recent rate law and on this interpretation the order was issued. By the order dated September 15, the chief premise was that "the Commission being of the opinion that carriers may legally issue through bills of lading from an interior point of shipment to a foreign destination which specifies the inland rate to the port of export and the ocean rate from the port of export, even though no joint through rate is published."

The Import Rate Case

The effect of this interpretation of the law is really to remove from the operation of the act any commerce in the course of which commodities move beyond the territorial confines of the United States. At one fell blow the law is held not to apply to foreign commerce.

This position seems to be remarkably inconsistent on two grounds. The Commission seems to have in mind that it has jurisdiction over commerce originating in the United States and terminating in this country, but which, in its transit, passes through an adjacent foreign country. If commerce of the kind just mentioned is subject to the act, one can see no good reason why commerce destined to or coming from foreign countries should not also be subject to the provisions of the law.

The Supreme Court of the United States has held that the provisions of the first section of the law, as it was in 1887, cover foreign commerce. In the Import Rate case decided March 30, 1896, the court, speaking by Mr. Justice Shiras, after quoting the language of the first section, said:

"It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (except commerce wholly within a State) as well that between the States and Territories as that going to or coming from foreign countries."

It is equally clear from this language, for it is definite and specific, that the Supreme Court considered that the act applied to what is ordinarily termed "foreign commerce"; that it would apply to commodities which are exported and imported.

Slightly Different Language

It is true that the language of the first section of the present law reads slightly different from the language of the same section in the old law. The portion of the first section which determined to what commerce the law shall apply is somewhat longer than that part of the section which formerly indicated the com-

merce over which Congress assumed to take jurisdiction. The section reads: (Italicised type indicates additions to the former law) "That the provisions of this Act shall apply to any *corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."*

Words in Parentheses

The particular provisions are that the recent law shall apply to corporations or persons who shall transport oil or other commodities (except water and gas) by pipe lines or by pipe lines in connection with rail or water transportation; and also the law adds intra-territorial transportation. Further than this there is no change, except the words "or partly by railroad and partly by water when both are used under a common control, management, or arrangement, for a continuous carriage or shipment" have been placed within parentheses by the new law.

It cannot be divined how a different interpretation can now be placed upon the word "arrangement" simply because it happens to fall within parentheses. This word was interpreted by the Interstate Commerce Commission in the case of the Boston Fruit & Produce Exchange v. New York & New England Railroad and other companies, decided in March, 1891. Con-

sidering this question the opinion of the Commission by Commissioner Veazey, said:

Previous Interpretations.

Upon the first and jurisdictional question it becomes necessary to inquire, What is the meaning of the words "common control, management, or arrangement for a continuous carriage or shipment," as found in the first section of the act?

Since the earliest history of railroads it has been quite usual for several lines of railroad to organize through routes and through rates for transportation over the same, and to place this through business within the control and management of a single person or board of persons, and had the act only used the words "common control and management" it might be reasonably supposed that it was the intention of Congress to limit the jurisdiction of the commission to that kind of business in which the carriers should segregate the through business from the local business and place it within the control of an independent board. It is quite apparent that Congress intended that the law should have a much wider scope and bearing, and this is evidenced by the use, in connection with the above quoted words, of the word "arrangement," which is undoubtedly qualified by the preceding adjective "common."

The best lexicographers give the meaning of the word "arrangement" as

"The act of arranging or putting in proper order; that which is disposed in order; a system of parts disposed in due order; any combination of parts or materials; the style or mode in which things are arranged; preparatory measure or negotiation; previous disposition or plan."

It will be seen, therefore, that the word selected to convey the legislative intent is very broad and comprehensive. There need not be a control of the through line centered in a single source of authority, but if the different carriers have invited interstate traffic over their roads, which is intended to be continuous, and have arranged their business and put it in proper order so that the continuity of the shipment shall be preserved, have combined their several lines and by preparatory measures and disposition of their affairs have provided for the reception, carriage and delivery of the traffic, such business is plainly within the scope of the act to regulate commerce.

A Puzzling Ruling

Thus the Interstate Commerce Commission seems to have held that where there is an arrangement for continuous carriage, and the property crosses State lines, it is interstate commerce and subject to the act. Such being the case, it is hard to see why, in the light of the decision of the Supreme Court in the Import Rate Case, commerce which now crosses the boundary of the United States should not also be subject to the law.

The present law prohibits the carriage of property unless the rates for its transportation shall have been filed and published. A portion of section 6 reads: "No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act."

Nor is this the only provision of the statute, for, by this law, it is made the duty of carriers to furnish such transportation as is provided for by the law, and to establish through rates. The provision of section 1 in this behalf reads: "And it shall be the duty of every carrier subject to the provisions of this Act, to pro-

vide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto."

The provision of the statute is that a carrier shall furnish "such transportation"; later, the statute determines what the word transportation "shall include." It cannot reasonably be said that the term transportation shall only include what is mentioned by the statute. Such an interpretation would be puerile. The term transportation is defined by able lexicographers to be "Act of transporting, or a state of being transported; conveyance; carriage of persons or commodities from one place to another." The language of the statute in all probability implies this definition or any other good definition of the term "transportation," for it provides, "The term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and of all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

Has the Commission Side-Stepped?

It therefore seems extraordinary, when one considers the decision of the Supreme Court in the Import Rate Case, when one considers the decision of the Commission itself in the Boston Fruit and Produce Exchange, when one considers the plain language of the statute, prohibiting transportation unless the rate applicable thereto shall be filed, when one considers what is included in the term transportation, when one considers that articles exported either from a port of shipment or from an interior point fall within not only the language but the express intent of the statute, that the Commission should have based its first and most important order upon the premise that such commerce is not subject to the Act. The practices which have been entirely too frequent in the past, the making of export rates at will, the changing of them by a reduction to friends and an advancement to the casual or indifferent shipper has been heretofore productive of gross abuses and discriminations. One of the purposes of the act has been to prevent "midnight" rates. In the report of the House Committee it was definitely stated that the object of the statute in requiring thirty days' notice of the change of rates was to cure this very evil. The decision of the Interstate Commerce Commission must, when it becomes thoroughly known and digested, strike a serious blow at the efficiency of the Act. It seems never to have been supposed that the Commission lacked jurisdiction to require the filing and the publication of rates upon commodities either to be exported or imported. In their present interpretation, the Commission seems to have side stepped, if not taken a few paces to the rear.

Unfortunately, there is no process provided by the law for the review of this interpretation. The Commission has spoken; there is no appeal; there is no right of review; and those who have been injured, who are

numerous, have no recourse; they can simply sit still and bear it. No open door is presented by which there can be a rectification of this decision which thwarted one of the purposes for which the statute was clearly enacted and which appears to have done more to emasculate the present law than was ever done by any decision of the Supreme Court upon the previous statute.

GREAT CAR SHORTAGE

Throughout North America, from Mexico to Canada, and from San Francisco to Portland, Me., there is a car shortage which is simply unprecedented.

Traffic has its periods of minimum and maximum volume, and the railroad naturally strains its rolling stock to the stretching point in the period of greatest traffic. That period seems to have arrived for the year, and shippers are in a highly excited state of mind. Many large orders for freight cars have been given by leading railroads, including one from the New York Central for 17,050 cars, to be ready for delivery in 1907.

The American Railway Association has the subject under consideration, and J. W. Midgeley has been asked to work out some plan which will relieve the situation.

Among the railroads there is a cry of "car thieves!" Of course, a "car thief" is a railroad which gets possession of cars belonging to other roads, runs them away, and uses them for its own purposes, regardless of the wishes of the owners.

At present each road is charged 25 cents per day for the first thirty days during which it uses a freight car belonging to another line. Experience has shown that this per diem is unprofitable for the road owning the car, and is insufficient to hasten its return by a line which may be making \$4 or \$5 a day clear upon it.

The result of car pilfering practices is found in the statement that originating lines find 60 per cent. more of their own cars on other rails than foreign cars in their possession. It is asserted that initial roads are compelled to provide cars with which to forward the freight which they originate. Furthermore, it is said, connecting lines expect such cars to run through destinations, which in the case of grain, the chief source of the difficulty, is principally North Atlantic ports.

Instead of loading such equipment in the direction of the home rails, as required by car service rules, it is declared that in most instances during the busy season Eastern lines divert Western cars into local trade. The result necessarily is to deprive the roads that preponderate in the origin of traffic of a proper quota of cars, with which to handle their local business.

A number of corrective plans have been suggested, among which are an exchange of cars on an

equalized tonnage basis; the establishment of a limited car pool or exchange; increased demurrage charges or the maintenance of an equipment company to comprise a special description of freight cars and to be operated on the principle of the Pullman Company, with the distinction that it shall be controlled by interested railroads and not by individuals.

Mr. Midgeley has made the suggestion that a co-operative company be formed to furnish railroads with refrigerator, stock and other special freight cars. He has not abandoned his original idea of a limited pool of standard box cars, the parties to the pool being the connecting lines. In the co-operative proposition Mr. Midgeley contemplates that each party shall contribute its quota of cars, the exchange or rental to be adjusted on a tonnage capacity. The ideal basis would be 1 cent per ton; then a 60,000 pound car would command 30 cents a day, an 80,000 pound car 40 cents, and so on. In that event the necessary material to repair such cars would be kept in stock, and, so far as practicable, the repairs and renewals be made by the pool.

Meantime, it is a condition and not a theory which confronts the shippers.

SEVEN TONS FOR THE I. C. C.

Seven tons of printed matter, for the most part of schedules of the various railroads engaged in interstate commerce, were sent to Washington and now await the examination of the commissioners. How many individual rates, how many modifications or peculiar adaptations of rates are contained in these 7 tons of schedules the commissioners will no doubt some day learn. But the physical magnitude of the task to which the commissioners are committed by law could not have been guessed by these officers until the railroads had, in answer to the law, sent to Washington this tremendous bulk of schedules.

How much of an organization how many competent clerks and men skilled in reading and understanding and systematizing rate schedules the commissioners have now in their employ is not known. But there is need of a very large number of clerks, and they must be competent men, too, if the commissioners are to make within several months careful scrutiny of the published rates of the railroads that are engaged in interstate commerce. Yet they must make that examination. Some basis or starting point is necessary. Therefore, it seems inevitable that some delay in the practical operation of the law must follow the collection and the depositing at Washington of this colossal bulk of schedules, 7 tons in all.

Every traffic manager should have a FREIGHT CLAIM INDEX AND RECORD. It saves time and money. Price \$5.

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALENDAR OF HEARINGS

Washington, D. C., November 8, 1906.—Cattle Raisers' Association of Texas v. Chicago, Burlington & Quincy Railway Company et al.
 Washington, D. C., November 8, 1906.—Cattle Raisers' Association of Texas v. Missouri, Kansas & Texas Railway Company et al.

COMPLAINTS FILED

Cornelius J. Jones, Hannah James and William James v. St. Louis & San Francisco Railroad Company

Removal of depot from Chase, I. T.

De Werres & Hinton Silk Dye Works v. Adams Express Company et al.

Excessive charges on dyed and undyed silk between points in Pennsylvania, New Jersey, Delaware and New York and Petersburg, Va.

Chamber of Commerce of El Paso, Tex., v. Atchison, Topeka & Santa Fe Railway Company et al.

Discrimination against El Paso, Texas, by reason of certain differentials against El Paso higher than apply to so-called Texas common points.

Cleveland Provision Company v. Baltimore & Ohio Railroad Company et al.

Excessive rates from western points to Cleveland, O., on live hogs and cattle, and from Cleveland to North Atlantic seaports on boxed meats, as compared with in and out rates to and from Chicago, Pittsburg, Buffalo and Indianapolis.

H. Clay Jones Company v. Philadelphia, Baltimore & Washington Railroad Company

Discrimination against complainant by requiring prepayment of freight charges on shipments of manure from Washington, D. C., to points in Maryland and other States.

Society of American Florists and Ornamental Horticulturists v. United States Express Company

Unreasonable advance in rates on flowers to New York from Somerville and Chatham, N. J., and Allentown, Philadelphia, Hillside and Dorrancetown, Pa.

Ryland & Brooks Lumber Company v. Norfolk & Western Railway Company et al.

Unreasonable charge on two shipments of lumber from Ford, Va., to Brooklyn, Md.

North Carolina Case Workers' Association v. Southern Railway Company et al.

Excessive minimum carload weight on shipments of furniture from High Point, N. C., and other points, to Pacific Coast terminal points.

Cattle Raisers' Association of Texas v. Galveston, Harrisburg & San Antonio Railway Company et al.

Unreasonable rates on live stock between points on the International & Great Northern Railroad and New Orleans, La., by reason of cancellation of joint through rate.

James B. Mason v. Chicago, Rock Island & Pacific Railway Company

Excessive minimum carload weight on shipments of baled straw from Center Point, Iowa, to Chicago, Ill. Unreasonable demurrage charge and failure to furnish cars.

Merchants' Traffic Association v. Denver & Rio Grande Railroad Company et al.

Higher rate on class and commodity shipments from Chicago, St. Louis and Kansas City for the shorter distances to Leadville and other intermediate points, than for the longer distance to Salt Lake City and Oregon.

HEARINGS HELD

October 1-5, 1906, Chicago, Ill.—In the matter of allowances to elevators by the Union Pacific Railroad.

October 8-10, 1906, Washington, D. C.—In the matter of the construction, publication and filing of rate schedules.

October 15-17, 1906, Chicago, Ill.—In the matter of the relations of common carriers subject to the act to regulate commerce to the ownership and operation of elevators, and the buying, selling and forwarding of grain.

October 22, 1906, Kansas City, Mo.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

October 22, 1906, Knoxville, Tenn.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

October 24, 1906, Omaha, Neb.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

October 25, 1906, Louisville, Ky.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

October 26, 1906, Des Moines, Ia.—In the matter of the relation of common carriers subject to the act to regulate commerce to coal and oil and the transportation thereof.

October 31, 1906, Washington, D. C.—In the matter of allowances to elevators by the Union Pacific Railroad. Final argument.

Express Companies

One of the amendments to the act to regulate commerce, adopted June 29, 1906, provides that the term "common carrier" as used in the act shall include express companies and sleeping car companies. Since August 28, when the amendments to the act took effect, a number of complaints have been filed against express companies, alleging either unjust discrimination or the exaction of excessive charges.

The first formal complaint against an express company under the amended law was filed August 29, 1906, by Edward B. Grossman & Company, a "mail order" house of Chicago, dealing in cloaks, coats, suits, woman's garments, etc., and alleges unjust discrimination on the part of the Wells, Fargo & Company Express. It is claimed by the complainant that it has been a long established custom for the express company to accept consignments of merchandise for transportation to consignees in various parts of the country, the express company undertaking to collect the price of the goods charged by the consignor, in addition to its own charges for the transportation, and that the practice of sending merchandise to customers in this way and causing the express company to collect not only its own charges, but also the cost price of the merchandise, has grown to be a universal one in most of the large cities of the country and particularly in Chicago, and that such practice, generally known as the C. O. D. method of shipment, has become essential to many forms of business, and especially to the "mail order" business.

It is alleged by the complainant that in the course of its mail order business with customers in the southwest during the past year it has had some friction with the Wells, Fargo & Co. Express, in respect to delay in the delivery of goods, upon which suits at law for the recovery of damages have been instituted against the express company; that such suits are now being contested by the express company, and that as a means of taking revenge upon the complainant for the bringing of such suits, it has notified the complainant that it will no longer under any circumstances accept consignments of merchandise from it with instructions to collect on delivery, even though the charges for carriage to a consignee and return are prepaid; and that such discrimination is not exercised against any other firm in the city of Chicago. It is claimed that the margin of profit in the mail order business is very narrow and the competition very keen, and that unless the complainant can receive the same treatment in regard to its shipments that its competitors receive, it will be impossible for it successfully to continue in business.

J. E. Walker, of Media, Pa., has filed a complaint against the United States Express Company and the Baltimore & Ohio Railroad Company, alleging discrimination against the patrons of a certain trolley line. The complainant claims that he constantly has occasion to use the said carriers' lines for carrying packages from Philadelphia to Hockessin, a distance of about thirty-nine miles; that about the year 1890 the railroad company and express company jointly established a system of package express for persons in towns adjacent to Philadelphia (one of which is Hockessin) by which system small packages weighing from five to fifty pounds are sent over their lines at a charge of from five to ten cents, stamps being bought and attached to such parcels. It is further alleged that about the year 1902 a trolley road was built and reached Hockessin, and for several years thereafter travelers on this trolley road had the privilege of this package express system, but about the year 1905 the carriers began to refuse the privilege of this package express to parties whom their station agents detected riding on the trolley road, as a result of which ruling persons living in the vicinity of Hockessin,

riding on the trolley road, must send their packages via the Pennsylvania Railroad to Kennett Square, about five miles distant, to avail themselves of the package rates; that before the carriers' agent at Philadelphia will receive a package for Hockessin, he will consult a list of names to see if the name of the Hockessin consignee is on the list; if it is, the agent refuses to receive the package; but if it is not, the package is received and forwarded without question.

The Werres & Hinton Silk Dye Works, Inc., located near Petersburg, Va., has filed a complaint against the Adams Express Company, United States Express Company, and Southern Express Company, alleging excessive rates. It is claimed that the complainant dyes silk for weavers who are located in various cities in the States of Pennsylvania, New Jersey, Delaware and New York. The white skein silk is forwarded as a through shipment to the complainant at Petersburg, Va., by such weavers, and, after being dyed, is returned to the weavers, the quick handling of such shipments being so essential that the use of express companies, even at higher rates than those of railroad companies, is absolutely necessary. It is claimed that at present the express companies charge the following rates, per 100 pounds, for carriage of such shipments of undyed silk to Petersburg:

From:

Allentown, Pa.	\$2.00	Phillipsburg, N. J.	\$2.10
College Point, N. Y.	2.15	Scranton, Pa.	2.50
Easton, Pa.	2.10	Shamokin, Pa.	2.25
Ephrata, Pa.	2.25	Summit, N. J.	2.25
Erie, Pa.	2.50	West Hoboken, N. J.	2.00
Fleetwood, Pa.	2.10	West New York, N. Y.	2.00
Lancaster, Pa.	2.00	Wilmington, Del.	1.60
Lower Jamesburg, N. Y.	2.00	York, Pa.	1.60
Paterson, N. J.	2.15		

It is alleged that the rates on dyed silk from Petersburg to such points are the same as their rates on the undyed silk to Petersburg, and that such rates are so unjust and so far in excess of what they should be that the complainant's business is thereby dwarfed, and it is claimed that just and reasonable rates for such service, per 100 pounds, would not exceed the following:

From:

Allentown, Pa.	\$1.30	Phillipsburg, N. J.	\$1.40
College Point, N. Y.	1.40	Scranton, Pa.	1.60
Easton, Pa.	1.40	Shamokin, Pa.	1.50
Ephrata, Pa.	1.50	Summit, N. J.	1.50
Erie, Pa.	1.60	West Hoboken, N. J.	1.30
Fleetwood, Pa.	1.40	West New York, N. Y.	1.30
Lancaster, Pa.	1.60	Wilmington, Del.	1.10
Lower Jamesburg, N. Y.	1.30	York, Pa.	1.10
Paterson, N. J.	1.40		

The Society of American Florists and Ornamental Horticulturists, with headquarters at Washington, D. C., has filed a complaint against the American Express Company, alleging that on or about May 1, 1906, the American Express Company increased by from 25 to 100 per cent. its charges for the carriage of flowers from Somerville and Chatham, N. J., Allentown, Philadelphia, Hillside and Dorrancetown, Pa., to New York City. It is declared that such advanced rates are unjust and unreasonable, and unwarranted by the circumstances of the case; that complainant's members are willing to pay express charges largely in excess of what carriers by railroad would be likely to charge on such a commodity, but that these advanced rates are so excessive as to be almost ruinous to their business. It is claimed that such shipments are generally delivered by the shipper to the express company, and that the markets in New York are bunched in a very limited area, not requiring much cartage in delivery, and that such express carriage of flowers does not call for any special service other than promptness of delivery. Violation of sections one, two and three of the act to regulate commerce is alleged.

Live Stock and Dressed Meat Rates

The Cleveland Provision Company, of Cleveland, O., has filed with the Commission a formal complaint against the Baltimore & Ohio Railroad Company and other carriers in official classification territory, complaining of the rates on live cattle and hogs to Cleveland, and the rates on the dressed meats from Cleveland to North Atlantic seaports, as compared with the in and out rates to and from Chicago, Buffalo, Pittsburg, Indianapolis, etc.

The complainant is engaged at Cleveland in killing hogs, calves, cattle and sheep, and preparing the products of the same for market. The hogs required for slaughtering purposes are purchased largely at the Cleveland Stock Yards or in the Chicago live stock market, although at times purchased in East St. Louis, Kansas City and other western markets, but it is claimed that whether purchased in the city of Cleveland or in the city of Chicago, the price is controlled by the price prevailing in Chicago; that is, the price at Cleveland is generally a combination of the price at Chicago plus the freight rate therefrom to Cleveland.

It is alleged that the rate in force from Kansas City and St. Joseph, Mo., to New York, on hogs in carloads, is 48½ cents per 100 pounds; the rate on hogs from the same points to Chicago is 20 cents per 100 pounds, and from Chicago to New York on the cured product under the name of "boxed meats," the rate is 30 cents, resulting in a total rate on the combined in and out shipments at Chicago of 50 cents per 100 pounds, and such combined charge exceeds the through rate on hogs from Kansas City and St. Joseph to New York by only 1½ cents per 100 pounds; while on similar shipments from Kansas City and St. Joseph, the rates on the live hogs in and on boxed meats out of Cleveland are respectively 33 and 21½ cents, making a total rate on the combined shipment of 54½ cents per 100 pounds, and this constitutes an excess of 6 cents per 100 pounds over the through rate on live hogs from Kansas City or St. Joseph to New York, and of 4½ cents over the combined rate on hogs and boxed meats via Chicago. It is alleged that in such case the mileage covered and the services performed by the carriers on Cleveland and Chicago receipts and shipments are substantially identical.

It is alleged that on shipments from Des Moines and Sioux City, in Iowa, the through rate on hogs to New York is 53½ cents, and from such points to Chicago and on boxed meats from Chicago to New York, the combined rate is exactly the same; but that on shipments of hogs from Des Moines and Sioux City to Cleveland, and on boxed meats from Cleveland to New York, the combined rate is 59½ cents when the hogs originate at Des Moines, and 60 cents when the hogs originate at Sioux City, resulting in an excess over the through New York rate on hogs of 6 cents per 100 pounds in the one case and 6½ cents in the other. That while the through rate on hogs from Kansas City or St. Joseph to New York is 48½ cents, and from Des Moines and Sioux City 53½ cents, the combined rates on hogs shipped from such points to Buffalo or Pittsburg, and on boxed meats shipped from Buffalo or Pittsburg to New York, are 52 cents from Kansas City or St. Joseph, 57 cents from Des Moines, and 57½ cents from Sioux City, and such combined rates show a uniform advantage over Cleveland and in favor of Buffalo and Pittsburg of 2½ cents per 100 pounds. It is alleged that there is a disadvantage to Cleveland, in favor of Buffalo and Pittsburg, of 2½ cents per 100 pounds in the in and out rate on all shipments originating at Kansas City, St. Joseph, or other Missouri River points, as well as on shipments originating at St. Louis, East St. Louis, or Chicago. It is further alleged that such rates on live hogs and boxed meats in and out of Cleveland, as compared with such rates to and from Chicago, Buffalo and Pittsburg, subject packers in the city of Cleveland to unjust discrimination and to undue and unreasonable prejudice and disadvantage, in violation of the provisions of the act to regulate commerce as amended.

The Peavey Elevator Case

At Chicago, during almost the entire first week of October, the Commission continued to take testimony in the case entitled "In the Matter of Allowances to Elevators by the Union Pacific Railroad Company," of which some mention was made last month, and in the general grain elevator investigation.

Some interesting testimony was given by S. MacMurray, a grain dealer at Woodriver, Neb., in connection with the allowance to the Peavey elevators by the Union Pacific Railroad. He declared that while he was employed by the Omaha Elevator Company he "broke two backs" and since he went into business for himself he has been threatened with a "broken back" by the same company. His story also embraced the Nebraska Legislature during its last session as well as the Governor of the State. He declared that with these men at his back he forced the railroad company to promise him "the earth," but since the legislature adjourned he can get nothing.

Some years ago MacMurray was in charge of one of the Omaha Elevator Company's elevators at Woodriver, Neb. He said the only other grain buyer there was W. W. Mitchell. Each morning, he said, he, as representative of the Omaha Elevator Company, made an agreement with Mitchell to buy at a certain price. It was also agreed that each should get half of the grain purchased and that if, at the end of the week, one had purchased more than the other the one who had the most should underbid, so that the accounts would be even without arousing suspicion. Finally Mitchell began bidding higher on some grain and the agreement was broken.

"Well, Mitchell stuck for three years, but I made him sell out," said MacMurray. "I reported him to my company, and they authorized me to pay the farmer as much as Mitchell could pay for the grain he bought."

Mitchell then sold to George S. Clayton, and the same program was carried out until Clayton began overbidding MacMurray. The Omaha Elevator Company then built another elevator at Woodriver, keeping the ownership hidden from the farmer, so the company had two agents at that point, the best field in Nebraska.

"Then it was two plug one, and we put him out," said the witness. "All the time we scrapped the farmer got the benefit, but we always got it back before the end of the year."

Another interesting bit of testimony was given by John J. Stream, president of the South Chicago Elevator Company. He declared the allowance by the Union Pacific to the Peavey interests put him out of the western market.

"Without that allowance I would be on an equal basis with the Missouri River merchant in the eastern market," said Mr. Stream. "With that allowance the Omaha people can overbid me in Nebraska and undersell me in New York."

W. S. Warren, of Hulburd, Warren & Chandler, commission merchants, was another witness who declared that the allowance granted the Peavey interests by the Union Pacific is an advantage for them. He declared that as a consequence of favors granted certain elevator interests by railroads in the past few years the number of commission men in Nebraska has been reduced from 200 to about 25. He said his company ceased operations in that State five years ago.

George F. Powell, a St. Louis grain man, said the allowances to Peavey at Omaha produced exactly the same effect as would an equal discrimination against St. Louis in the freight rate. He was able to pay more for grain during a short period when an equivalent allowance was paid at St. Louis.

"Didn't the farmer get the benefit of the increased price?" he was asked.

"He got the benefit of it just as he would of any cut in the freight rate," the witness replied.

The witnesses were unanimous in saying that the allowances ought to be paid to all elevators in the country, or that none should be paid; otherwise there would be unjust dis-

crimination against those not receiving an allowance and the markets at which they were located.

The Coal and Oil Investigation

Acting under the joint resolution of Congress, approved March 7, 1906, the Commission recently commenced an investigation of the conditions existing in the Western coal fields, with a view to determining whether the coal carrying roads have been violating the anti-trust law, whether the railroad companies and their officials have any interest in any coal lands or traffic, and whether or not the carriers discriminate in furnishing cars between different shippers. It will be remembered that during the spring of the present year the investigation was directed toward the coal carrying roads in the Northeastern States, and that some interesting conditions were brought to light in regard to discrimination between shippers. The testimony offered at the recent hearings, which have been held in Omaha, Salt Lake City, and Denver, would seem to show that equally interesting conditions exist in the West. Among the points made and charges brought forth by witnesses at the recent Omaha hearing were the following:

That no new independent coal concerns have been doing business along the lines of the Union Pacific Railroad for more than twelve years, leaving the business to the Union Pacific Coal Company and a few small independent concerns that have been established for many years.

That the Union Pacific Coal Company is owned by the Union Pacific Railroad Company.

That the Union Pacific Railroad can increase the freight charges on coal to suit itself, thus reaping enormous profits and compelling the consumer to pay more for fuel.

That Western Nebraska is dependent almost entirely upon the Union Pacific for its coal.

That the Union Pacific's coal rate from Rock Springs, Wyo., where some of its mines are located, to Omaha and other Nebraska points is \$3.75 a ton, while the Burlington charges but \$2.75 for the haul from Sheridan, Wyo., to Omaha, practically the same distance.

Admission by Vice President and General Manager Dyer O. Clark, of the Union Pacific Coal Company, that a number of its employes filed claims on coal lands and then transferred them to the Superior Coal Company, an allied concern, many of the employes being furnished with money to buy land.

Charges by Warwick Saunders, of Davenport, Ia., and Randall Brown, of Omaha, that, although they have been interested in valuable coal lands along the Union Pacific route, the property has remained idle because the Union Pacific Coal Company prevented them from securing connections with the Union Pacific Railroad Company.

Admission by General Manager Clark that he is the trustee for all but three shares of the capital stock of the Superior Coal Company, a corporation subsidiary to the Union Pacific Coal Company.

One very interesting witness at the Omaha hearing was A. F. Abbott, of Davenport, Ia., who testified in relation to the manner in which the Union Pacific Coal Company obtained possession of its coal lands. A part of Mr. Abbott's testimony was as follows:

"I am the party who sold the northwest quarter of Section 28, Township 21, Range 102, in Sweetwater County, Wyoming, to the Superior, or Union Pacific, Coal Company. This particular piece of land had been previously filed upon by one Frank Newton, of Denver, who was evidently a fictitious person and who, with fifteen fictitious other parties, had been induced to file on lands in Sweetwater County, at, as I believe, the instance of the Union Pacific Coal Company. D. O. Clark had land all about the particular quarter. I made the necessary declaratory statement as a coal prospect on the land, paying the \$3 fee and subscribed to the necessary oaths.

"I had no conversation with any of the Union Pacific officials before I made the transfer of the land, this being done through my agent, Warwick Saunders. At this time I was working as a common laborer in the Sioux City & Rock Springs Coal Company properties and had a small interest therein. I made my own investigation and did the first development work on my land and was satisfied that coal was there. I paid the \$3 declaratory fee and the \$3,200 for the quarter when I proved up. I borrowed the \$3,200 from W. H. Kaniff, who was secretary of the Sioux City Company. Saunders acted as the intermediary between me and the Union Pacific Coal Company. The terms I made were \$10,000 as a cash bonus and a fourth interest in the interest that the directors of the Sioux City & Rock Springs Coal Company had in that property. I made the transfer of the lands to the Union Pacific Coal Company and got my \$13,200, which Saunders paid to me, as I had sold to Saunders direct."

Two witnesses testified at this hearing as to the combine of Omaha coal dealers, known at the Omaha Coal Exchange. Both swore positively that the price at which coal shall sell is agreed upon by this organization, and that the price is not lowered without notice being given to the secretary of the exchange. One witness, who swore that these conditions now exist, was H. E. Orstrom, secretary of the exchange.

"Does the exchange fix the price at which coal shall be sold?" asked counsel for the Commission.

"Well," the witness replied, "the prices maintained are uniformly the same."

"How is that?" asked Commissioner Prouty. "Does it just happen that prices remain uniformly the same?"

Orstrom replied that if a dealer wants to lower the price of coal, he notifies the secretary, and at a regular meeting of the exchange this matter is talked over, and that then the price is adopted by all the dealers. He knew of this having been done once or twice since he became secretary of the exchange.

"The purpose of the combine," said Orstrom, "is to benefit the coal dealers, to make efforts to secure proper car service, to inquire into matters pertaining to bad debtors, and to see that the purchasers get proper weight." Orstrom testified that he understood that the Union Pacific fixes the wholesale and retail prices of products of mines along the Union Pacific Railroad.

"Can a dealer reduce the price of coal," asked Commissioner Prouty, "without giving notice?"

"It is not done."

Walter Wills, formerly special auditor of accounts for the Omaha Coal Exchange, swore that the Union Pacific makes the price, both wholesale and retail, of Rock Springs coal regarding its sale in Omaha.

D. O. Clark, superintendent of the Union Pacific Coal Company, testified that the Abbott quarter section is now owned by the Superior Coal Company. Asked if he knew that the land law allows an individual to take not more than one section, Clark said he knew that. He admitted, however, that the Superior Coal Company has taken six sections through individuals who had been induced to file on various quarters.

"Was that done to circumvent the law?" he was asked.

"That was the only way the land could be secured," Clark replied.

He did not remember if Frank S. Briggs, of Denver, had been paid \$250 for filing upon one of the quarters. He added that Briggs was a stranger to him and was not an employe of the Union Pacific Coal Company.

"Was Briggs one of the 160 men who filed coal declaratory statements for the Superior Company in 'Horse Thief Canyon?'"

"Yes, he was one of them."

"Were the others employes of the Union Pacific Coal Company?"

"Yes, sir."

Clark averred that the purpose of taking up that land was to get all the coal land in the canyon that was good for anything, in order to keep out independent operators.

As to the entrymen who filed on coal lands in Horse Thief Canyon for the Superior Company, Mr. Clark said the papers were made out by George G. Black, attorney for the Union Pacific, and it was he who paid the filing fee. "I reimbursed him," said Mr. Clark.

"Was the name 'Superior' given that company as a means of deceiving the public regarding the fact that it is a Union Pacific corporation?"

"There were a number of reasons for taking that name. There was a mortgage on the Union Pacific Coal Company's properties, and we did not care to have the new company identified with the Union Pacific Coal Company. I received my instructions through Judge Cornish, vice-president of the Harriman lines. The stock of the Superior Company all stands in the name of Judge Cornish."

"Did those men, employes of the Union Pacific, file on all the good coal land in the Horse Thief Canyon?" asked Commissioner Prouty.

"Yes, sir."

"Why was that done?"

"So that we could get all the coal we wanted and we proposed to keep others out."

W. D. Lincoln, superintendent of car service for the Union Pacific, said that enough cars to handle locomotive fuel were furnished first to the Union Pacific Coal Company, and that afterward 72 per cent. of cars for commercial coal were furnished the Union Pacific Coal Company and 28 per cent. of cars went to the Central Coal & Coke Company. When there is no car shortage from 250 to 260 cars a day are loaded at Rock Springs. No commercial coal is moved until after engine coal has been provided for the Union Pacific.

The hearing in this matter was continued at Denver and Salt Lake City. The testimony taken in Denver confirmed the earlier testimony that unscrupulous men signed papers purporting to take up coal lands in Horse Thief and Long Canyons, Wyo. These men, it is alleged, were paid from \$3 to \$6 per signature. Other witnesses testified that such methods made it impossible for legitimate operators to secure coal lands along the line of the Union Pacific Railroad Company.

None of the witnesses examined would admit that he knew what he was doing when he signed papers and received the money. Each remembered that he had been taken into a big room at the Union station and sworn before signing any documents.

One of the startling bits of testimony was that of Cyrus Beard, Chief Justice of the Supreme Court of Wyoming, who informed the Commissioner that he had purchased a quarter section of coal land with funds furnished him by the Union Pacific Coal Company, and later sold the land to the company for \$200 more than he paid for it. Before leaving Denver for the East, Commissioner Prouty is reported to have made the following statement:

"If the evidence given before me—and I believe it to be true—can be substantiated, the Union Pacific Coal Company, a subsidiary company of the Union Pacific Railroad Company, wrongfully controls coal lands in Wyoming and other States through which it passes that are worth millions of dollars. I have concluded my hearings in Denver and I shall go to Washington, D. C., to make my final report.

"The matter will have to come before Congress, and after that it is a matter for those most deeply interested to begin civil actions in the courts. The testimony heard today was sensational in the extreme. However, I heard the same statement made in Omaha and Salt Lake City against the same company. I think the testimony heard in Denver in connection with the matter will be the last heard in the West.

It may be necessary to hear other witnesses, but I think they can be heard in other cities."

A further hearing in the coal and oil investigation was held at Knoxville, Tenn., on October 22, relating conditions in coal fields served by the Louisville & Nashville Railroad and Southern Railway. James R. Woolridge, general manager of the Woolridge Coal Company, located on the Southern Railway, stated that he could market only about 40 per cent. of his output because of car shortage. He claimed that there was a discrimination against his mines in favor of Middlesboro mines, that Middlesboro got practically a full supply of cars for company use, and the remainder of the cars for the district were apportioned to other mines in the district. Mr. Woolridge claimed that he was discriminated against in car supply in that cars were furnished in greater proportion for better paying freight.

A. M. Chamberlain, manager of the Sagamore Coal Company, asserted it to be his belief that the relations of J. L. Manring, of the Manring Coal Exchange, with the Southern Railway Company, and the mutual relations of that company, or its officers, with the coal company, are such as to cause a discrimination in favor of the Manring companies and against other companies in the matter of car supply.

It was stated in more than one instance that operators could not make contracts for their output with R. A. Dugan, of the Southern Railway, and in one instance it was stated that Mr. Dugan had recommended that the operator handle his coal through which the Southern Railway bought its coal.

C. M. Woodbury, of the Mingo Coal & Coke Company, was questioned in regard to the recent advance in the price of coal, and told of his conference in Washington with Southern Railway officials. He was of the opinion that discrimination is practiced in the distribution of cars by the Southern Railway in the Middlesboro district. He produced a statement which in his opinion showed that the Manring interests were given preference in the distribution of cars. This dealt with the coal shortages, etc., of 1904-1905, alleging a shortage with independent mines during a few months of those years with an increase in the output of the Manring mines.

A great many different witnesses were called at this hearing, their testimony in general being to the same end, that certain companies were given undue preference in the distribution of cars, to the prejudice of the independent operators.

At the close of the Knoxville hearing the Commission adjourned to Louisville, Ky., to hear further testimony in the same investigation.

Tariff Rulings

On September 29 the Interstate Commerce Commission issued its Tariff Circular No. 4-A, relating to the publication and filing of rates, and reading as follows:

The Interstate Commerce Commission, in answer to numerous inquiries from railroad officials and other interested persons, and for the purpose of giving administrative construction to certain provisions of the amended act to regulate commerce which became effective on the 28th day of August, 1906, announces the following rulings:

NOTICE OF CHANGES IN RATES.—Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points, by the same route, such higher joint rate may, until December 31, 1906, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

Desire to meet the rates of a competing road which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.

PARTY RATE TICKETS.—The tariffs and regulations governing the issuance and use of party rate tickets, together with

the rules relating to the allowance of free baggage to persons using such tickets, must be regularly filed and published. The privileges so extended must not be limited to any particular class or classes of persons, but must be open to all. Regulations governing issuance and use of party rate tickets must not be such as will operate to evade or nullify any provisions of the law. The Commission suggests that the rules should provide that the party shall travel on one ticket and consist of not less than ten persons.

In special or emergency cases prompt consideration will be given to requests to change tariff rates governing party rate tickets on less than thirty days' notice, when such requests are accompanied with full information as to the conditions and necessities upon which they are based.

FILING INTRASTATE RATES.—All intrastate or other rates which are used in combination with interstate rates for interstate shipments must be posted and filed with the Commission, and can only be changed, as to such traffic, in accordance with the act.

The Interstate Commerce Commission, on October 12, issued to all carriers subject to the provisions of the act to regulate commerce its Tariff Circular No. 5-A, giving the following rulings in regard to the publication and filing of rates, issuance of free passes, etc.:

DIVISION OF JOINT RATES—CONTRACTS AND AGREEMENTS FOR MUST BE FILED.—A contract, agreement or arrangement between common carriers governing the division between them of joint rates on interstate business is a contract, agreement or arrangement in relation to traffic, within the meaning of section 6 of the act to regulate commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement, or arrangement is verbal or is contained in correspondence between the parties or rests on their custom and practice, a memorandum of its terms must be filed with the Commission.

Tariff Circular No. 4-A, of date September 29, 1906, contains the following paragraph:

"NOTICE OF CHANGES IN RATES.—Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points, by the same route, such higher joint rate may, *until December 31, 1906*, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission."

In order that no carrier shall be placed at a disadvantage thereunder, the Commission has amended said rule to read as follows:

NOTICE OF CHANGES IN RATES.—Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points, by the same or another route, such higher joint rate may, *until December 31, 1906*, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

ROUND-TRIP EXCURSION RATES.—The Commission has heretofore announced in Tariff Circular No. 2-A with respect to notice as to certain excursion rates:

Rates for an excursion limited to a designated period of not more than three days may be established, without further notice, upon posting a tariff one day in advance in two public and conspicuous places in the waiting room of each station where tickets for such excursion are sold and mailing a copy thereof to the Commission.

Rates for an excursion limited to a designated period of more than three days and not more than thirty days, may be established upon a notice of three days in place of the thirty days notice required by the amended sixth section.

The Commission has made this additional ruling:

Rates for a series of daily excursions under either of the above provisions, such series covering a period not exceeding thirty days, may be established upon notice of three days as to the entire series, and separate notice of the excursion on each day covered by the series need not be given.

The term "limited to a designated period" used in the foregoing quotation from Tariff Circular No. 2-A, is construed to cover the period between the time at which the transportation can first be used and the time at which it expires.

ROUND-TRIP TICKETS ON CERTIFICATE PLAN.—Round-trip tickets on the certificate plan may be issued at reduced rates and their use be confined to the delegates to a particular convention or to the members of a particular association or society, upon the condition that a certain number of such tickets shall be presented for validation for return trip before the reduced rate for return trip will be granted to any. Tariffs of rates and regulations governing issuance and use of round-trip tickets on certificate plan must be regularly filed and posted and the regulations must not be such as will operate to evade or nullify any provisions of the law.

The Commission suggests that the rule should provide that not less than one hundred tickets shall be presented for validation for return trip before reduced rate will be granted to any.

Round-trip tickets on certificate plan may, also, be issued to Government employees going home to vote and returning to their employment.

ISSUANCE AND USE OF FREE PASSES.—The provisions of the act relative to the issuance of free tickets, free passes, free transportation, or free carriage to employees of carriers apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carriers. Land and immigration agents, unless they are *bona fide* and actual employees, representatives of correspondence schools, agents of accident or life insurance companies, agents of oil or lubricating companies, etc., are not within the classes to which free or reduced-rate transportation can be lawfully furnished.

But the Commission does not construe the law as preventing a carrier from giving necessary free transportation to a person traveling over its line solely for the purpose of attending to the business of, or performing a duty imposed upon, the carrier, nor from giving free carriage over its line to the household and personal effects of an employee who is required to remove from one place to another at the instance of, or in the interest of, the carrier by which he is employed.

Nor does the Commission construe the law as preventing a carrier from giving free or reduced-rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier, provided such arrangements for free or reduced-rate carriage are made a part of the specifications upon which the contract is based and of the contract itself.

FREE AND REDUCED-RATE TRANSPORTATION FOR MINISTERS OF RELIGION, ETC.—The provisions of the act relative to the issuance of free or reduced-rate transportation to ministers of religion do not apply to, or include, members of the families of ministers of religion. Neither do the provisions of the act relative to the issuance of free or reduced-rate transportation admit of including therein officers of the Government, the Army, the Navy, or members of their families, or other persons to whom such considerations may have been extended in the past, unless they are within the classes specifically named in the act.

NOTATION ON TARIFF OF SPECIAL PERMISSION.—In each instance where by special permission from the Commission a tariff is made effective in less than thirty days, such tariff must bear the notation: "Effective (insert date), by special

permission of the Interstate Commerce Commission of (insert date)."

Liability of a Water Carrier in Respect of Rebates

A verdict of guilty was returned in the case of the United States v. Camden Iron Works, recently tried before a jury in the United States District Court for the Eastern District of Pennsylvania. The case involved questions in relation to the publication and filing of tariffs covering transportation partly by rail and partly by water.

It appeared that the Camden Iron Works contracted with an agent of a water company for the transportation of certain iron pipe from points in New Jersey and Pennsylvania to Winnipeg, Canada. This shipment was routed by such agent over rail routes to the Great Lakes, thence by water to Duluth, and thence by rail to destination. At the date of shipment the published rate on iron pipe over this rail and water route to Duluth was 24½ cents per 100 pounds and the published rail rate from Duluth to Winnipeg was 25 cents, the total being 49½ cents. The water company filed no tariff nor concurrence in the rate published, but accepted the shipment on the through rating of its agent, settled with its connections on the 49½ cent basis, and retained its proportion of this charge, out of which it returned to defendant 4½ cents per 100 pounds. The court held and the jury found that the foregoing facts constituted interstate transportation under a common arrangement for a continuous carriage, and that the water carrier by such participation became for that shipment subject to the provisions of the act to regulate commerce, and that receiving from a water carrier a refund of part of an established through rate constitutes a violation by the shipper of the Federal law. In his charge to the jury, Judge Holland said:

"It is true, as claimed by the defendant, that the water company is not within the interstate commerce act, and is not required to file a schedule of its rates so long as it is operating independently and over its water route. Even though it were to make independent contracts for interstate or foreign commerce over its own route alone, so long as it only transported over its own route it would not be subject to the interstate commerce act. If this defendant had shipped its iron pipe to the borders of the Great Lakes and then had made its contract with the water company to transport it to Duluth, and then again had made its arrangement for its continued shipment with the Great Northern or any other railroad to the point of destination, the defendant would have been permitted to make whatever contract it saw fit to make with this water company, because it would not then come within the provisions of the commerce act.

"In other words, the Mutual Transit Company is not within the act so long as it is not transporting on a continuous shipment partly by rail and partly by water. You can make a contract with any railroad company to ship your goods from here to the Great Lakes; you can then go to the Mutual Transit Company and make any contract you please, however high or however low, for it to ship those same goods over the Great Lakes, so far as it runs, and that company would not be subject to the Interstate Commerce Act or to any schedules the railroads might have. It could make such a bargain with you as it saw fit to make. But when that Mutual Transit Company undertakes to make a contract from Philadelphia to Winnipeg and uses part rail and its own water route in connection therewith, then it is a question whether or not it is a continuous shipment by arrangement partly by rail and partly by water, bringing itself within the commerce act. The defendant did not make separate contracts with the different companies. It did not make a contract simply with the Mutual Transit Company for the transportation of its iron pipe across the Great Lakes by water, but it did make a contract with the water company for a continuous shipment, partly by rail and partly by water.

"The water company made a contract which it could not carry out without adopting a route partly by rail and partly by water. Was there an arrangement between these companies? The Government contends that there was. It is not necessary to show such arrangement, if any, in writing. It may be verbal, or it may never have been expressly agreed upon, but simply acted upon by the different companies in the handling of the freight. The Government has offered evidence to show there were rates filed and published between Philadelphia and Winnipeg, the total of which was 49½ cents. The Baltimore & Ohio and the Reading railroads in their tariff filed and published from Philadelphia to Duluth made a rate of 24½ cents, which included the transportation from the borders of the Great Lakes over the Mutual Transit to Duluth. The shipment was made on a through rate, corresponding with the sum of these two rates so filed and published. The initial carrier sent a bill for the freight at the rate filed and published. The defendant paid the freight at this rate. There were other facts and circumstances to indicate that the shipment was a continuous one, in accordance with an arrangement between the companies, or how would the initial railroad have known how to charge for the freight?

"It has been determined by the Supreme Court that when goods are shipped under a through bill of lading from one point in one State to a point in another, and when such goods are received in transit by a State common carrier under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce.

"I therefore charge you in this case that if these goods were shipped on a through bill of lading or any other through document or writing from any place in the United States to an adjacent foreign country upon a contract of continuous shipment by a water company, partly over railroads and partly over its own water route, and such goods are received in transit on this through writing under a conventional division of charges, such water company must be deemed to have subjected its company to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce.

"Now, it is true that before a water company can be bound by the Interstate Commerce Act it must be shown that it is part of a continuous transportation line over which lawful tariffs have been filed and published under a common control, management or arrangement, but where it is claimed that the operation is by arrangement, as in this case, arrangement can be shown by facts and circumstances such as have been produced before you by the Government in this case. And I therefore say to you that if you believe the evidence in this case on both sides, you may say that this water company did as to this transaction form a part of a continuous line of transportation from the initial point to Winnipeg by such arrangement as is contemplated by the act, and is subject to its provisions.

"An express agreement for the through rate is not required where the tariffs are filed and published, as in this case, but the successive receipt and forwarding in the ordinary course of business by the two or more carriers under through bills, or any arrangement for a continuous carriage, is evidence of assent to such common arrangement as to make the carrier a party to the contract within the meaning of the act, and the fact that the carrier participated, together with any other evidence of assent, can be proven as a fact before the jury as evidence of its concurrence in the tariff filed and published."

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BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

Blocking for Heavy Machinery

To the Editor of Freight:

SIR—We are shippers of heavy machinery requiring the use of open or flat cars to transport same. Therefore, we have to use a considerable amount of blocking to insure safety in handling by the railroad company. Can we legally require the railroad companies to furnish the blocking, and at their expense?

Yours truly,

ADVANCE THRESHER COMPANY.

BATTLE CREEK, Mich., September 7, 1906.

INQUIRY ADVANCE THRESHER COMPANY.

The duty of a carrier to furnish blocking for the purpose of securing machinery on flat cars has never been determined by the courts. Of course, they have held that it is the duty of carriers to furnish, at their own cost, grain doors and similar appliances. At the present time a litigation is in progress to determine whether or not it is the duty of carriers to furnish stakes for the securing of lumber on flat and gondola cars, making an allowance in weight therefor. Practice in this behalf is not uniform. If it shall be held to be the duty of carriers to furnish stakes for securing lumber, we see no reason why the same duty should not exist in regard to furnishing blocks for machinery.

Storage Charges in South Carolina

To the Editor of Freight:

SIR—Subject: Storage charges in South Carolina.

Under date of September 28, 1905, we shipped an iron safe from Newark, Ohio, to Middendorf, South Carolina, where same remained on hand, unclaimed, for some time. This safe weighed 875 pounds, and storage charges were assessed as follows:

875 lbs. at 15 cents per 100 for first fifty days. . . \$66.09
875 lbs. at 1 cent per 100 for eleven weeks. 90)

Total. \$67.08

We have taken this matter up through the general claim agent of the Norfolk & Western Railway Company, and they advised us that these charges are in accordance with the laws of the State of South Carolina, which also provides that the carriers have the right to count Sundays and holidays the same as other day when figuring storage charges. We might add that these charges accrued on the Seaboard Air Line.

We will thank you to investigate this matter at your earliest convenience, as a very important settlement with one of our factories hinges upon your decision.

Thanking you in advance and inclosing a stamped envelope for a reply, we are

Very truly yours,

SEARS, ROEBUCK & CO.,

Per G. A. Wrightman, Traffic Manager.

CHICAGO, September 22, 1906.

INQUIRY SEARS, ROEBUCK & CO.

The rules concerning the storage rates for package freight in South Carolina made by the Board of Rail-

way Commissioners, pursuant to an act of the General Assembly of South Carolina, and approved February 15, 1901, provide:

"The maximum charges for the storage of freight by the railroads, when stored in the warehouse of the said railroads in this State, shall be as follows:

"For five days and under, 1 cent per hundred pounds per day.

"For ten days and over five days, 6 cents per hundred pounds.

"For twenty days and over ten days, 8 cents per hundred pounds.

"For thirty days and over twenty days, 10 cents per hundred pounds.

"For forty days and over thirty days, 13 cents per hundred pounds.

"For fifty days and over forty days, 15 cents per hundred pounds.

"Each additional week and fraction thereof thereafter, 1 cent per hundred pounds. The minimum charge for any one shipment shall be 5 cents. Not more than \$1 per day shall be charged for any one consignment not in excess of a carload."

The unit rate charged for the first fifty days—namely, 15 cents per hundred pounds—and for the subsequent eleven weeks at 1 cent per hundred pounds, appears to be correct. The extensions, however, are not properly computed.

It should be observed that at the day rate the charge for storage is in excess of \$1 per day, which is a violation of that part of the rule reading: "Not more than \$1 per day shall be charged for any one consignment not in excess of a carload."

Concerning Sundays and legal holidays, there appears to be no rule dealing specifically with such days after the expiration of the free time. Rule 8 reads:

"Legal holidays and Sundays shall not be taken into account in reckoning the seventy-two hours herein allowed for removal of freight without charge."

The general rule of storage is that Sundays and legal holidays are to be included. In the absence of a rule waiving this general custom, the warehouseman is entitled to charge for such days.

The I. C. Commission

To the Editor of Freight:

SIR—Kindly let us know, if possible, just when the Interstate Commerce Commission was created: also power given to them when first created, and what changes have been made in their authority since that time. The writer has never taken advantage of an opportunity as yet to comment on your publication, but assures you as long as he is connected with any business where shipments are made in this State or

any interstate traffic he will never be without a copy or allow his subscription to drop off.

Yours truly,

FULLER & RICE LUMBER & MFG. CO.,
E. M. Holland.

GRAND RAPIDS, Mich., September 25, 1906.

INQUIRY FULLER & RICE LUMBER & MANUFACTURING
COMPANY.

The original act to regulate commerce was approved February 4, 1887. This act created an Interstate Commerce Commission consisting of five members, and the purpose of the act was to provide regulations for the government of interstate and foreign commerce. In brief, the purposes of the act were to abolish transportation discriminations and abuses; to compel the publication of tariffs; to provide a tribunal before which shippers could allege and prove rates to be unreasonable or discriminatory; to prevent the charging of greater compensation for a shorter than for a longer distance under substantially similar circumstances and conditions. It was popularly supposed that the Commission created by this act had authority under the powers given to it to reduce a rate which had been challenged by a shipper and which had been proven to the satisfaction of the Commission to be unreasonable or discriminatory. This power, it was held by the Supreme Court in 1897, Congress had not conferred upon the Commission. As the result of this decision, the Commission became, to a large extent, an advisory body, as its orders were inforcible under the original statute only through the courts of the United States in proceedings brought by the Commission for that purpose.

Several sections of the act were amended by a statute approved March 2, 1889, by which the duties and powers of the Commission were somewhat enlarged and more clearly defined. The duties of the carriers are also set forth by this amending act and provision made for violation of the act or disobedience to the orders of the Commission.

Section 12 of the original act was amended by an act approved March 10, 1891. This act enlarges the scope of the Commission to inquire into the management of the business operations of the carriers for the purpose of enabling it to perform its duty in enforcing the law. It authorizes the Commission to apply to the district attorneys to institute proceedings against violators of the act, and confers upon the Commission power to require attendance of witnesses, the production of books and papers; it also confers certain powers upon the circuit courts of the United States concerning witnesses who are in contempt. The act was subsequently amended by an act approved February 11, 1893, by which persons are not excused from testifying, producing books, etc., upon the ground that the testimony or evidence required may tend to criminate the witness.

The so-called Elkins Law was approved February 19, 1903, by which rebates were defined, prohibited and made punishable by fine, instead of by fine and imprisonment, as under the original act.

The act approved June 29, 1906, and its provisions have been set forth in *FREIGHT*, and the inquirer is referred to *FREIGHT* for July, 1906.

There are several acts of minor importance dealing with procedure and evidence.

Bill of Lading Equities

To the Editor of Freight:

SIR—In your issue for September I find the following in the article on "Bills of Lading and Uniform State Laws" by George H. Hull, Jr.:

"According to the tenor of these laws, it is held that when a bill of lading is issued by a carrier against goods received for transportation, the transfer of this bill of lading to a bona fide purchaser for value, or to a person advancing money upon it, does not confer upon such person a positive title to the underlying goods, for they may subsequently be followed and attached by an outsider who had previously sold them to a customer on credit and failed to obtain payment therefor."

I have the following case before me:

A country shipper sent forward to a corporation engaged in the export business a car of lumber, sending them the local bill of lading by mail, and drawing upon them at three days' sight for the amount of his invoice for the car. The president of the corporation, on receipt of the bill of lading, went over to the foreign freight agent of the connecting line, and exchanged the local bill of lading for a through bill of lading, calling for delivery of the property in London, and used this as collateral in making a draft on the London house, and on the next day following the corporation went into the hands of a receiver. The country shipper's draft was returned unpaid, whereupon he attached the car, and had it held at the seaboard. He ultimately succeeded in getting possession of the car, but in order to do so he had to put up a bond, and a suit is now pending on the part of the foreign broker for the amount of the draft he paid in exchange for the bill of lading. Referring to the above extract, has the country shipper any chance to successfully defend the suit?

Yours truly,

ROBERT MCLEAN.

BALTIMORE, Md., September 26, 1906.

INQUIRY ROBERT MCLEAN.

It is rather dangerous to hazard a statement upon the chances to successfully defend any suit; this, for the reason that there are unknown elements which may arise at the trial table. Assuming that none of these elements may be brought forward, and further assuming that there was no fraud on the part of the exporter, and further assuming that the goods were ordered by the exporter in the usual course of business to be shipped under certain directions, it is quite clear that under the law the consignee (the exporter) acquired a valid title to this property. The bill of lading would appear to have been a straight shipment. Immediately upon taking such a bill of lading title vests in the consignee unless there is an agreement or understanding that title shall not vest. The title of the exporter if the goods were sold upon credit—and they appear to have been sold upon at least three days' credit—is, after the shipment is made and before delivery, as good as the title of the shipper to the same property. Having good title, the exporter could handle the property as he

saw fit. He chooses to transfer his title to the consignee under the ocean bill of lading, and at the same time pledge the property to a banking institution. We think it fair to infer that the plaintiff in the suit brought upon the bond is entitled to recover the amount which he has advanced upon the ocean bill of lading.

It should be remembered, however, that our view of the case is subject to any legal fraud which may have been perpetrated upon the shipper by the exporter. If the shipment of the goods was obtained through a subterfuge or misrepresentation amounting to fraud, such title as the shipper had will not vest in the exporter. Herein lies one difference between the bill of lading and a purely negotiable instrument. Transfer of a negotiable instrument cuts out prior equities; the transfer of a bill of lading does not defeat prior equities.

Routing Instructions

To the Editor of Freight:

SIR—I understand that when a shipment is delivered to a railroad company, consigned to a point which is located on two connecting lines, it is the railroad company's place to route this shipment via the cheapest line, unless where there is no routing designated on the B. L., and in case they route this shipment via the line over which the higher rate applies, that they must refund on the basis of the lower rate.

It seems to me that I have seen a ruling to this effect by the Interstate Commerce Commission, but am not in position to locate it. Kindly let me hear from you regarding this, and also refer to any case that might cover this point.

Thanking you for an early reply, I remain

Yours truly,

J. F. STROMBECK.

MOLINE, Ill., September 28, 1906.

INQUIRY J. F. STROMBECK.

It is the undoubted duty of a carrier to obey the routing of a shipper, provided the route given is a practicable one; if it deviate from the routing given, it must have a good excuse for so doing, or be held liable for damages if any result.

In the absence of routing instructions it is the duty of the initial carrier to route the shipment via a usual, customary, reasonable and direct route. It can be seen that this might not always be the cheapest route, as is suggested by the inquirer. If an initial carrier chooses a high priced route and damage results, the shipper is entitled to be compensated, provided in so doing there is no violation of the Interstate Commerce Law respecting rebates and concessions.

Freight Association Boundaries

To the Editor of Freight:

SIR—In one of your issues of FREIGHT of several months ago you outlined what comprises the various Freight Association boundaries—for instance, the Central Freight Association, also what comprises the Western Trunk Line Association, etc. Can you give us refer to that number of FREIGHT? and "I be

kind enough to send us another copy we will be glad to remit.

Very truly yours,

PEERLESS TRANSIT LINE,
W. E. MacEwen, Claim Agent.

CLEVELAND, Ohio, October 1, 1906.

INQUIRY PEERLESS TRANSIT LINE.

The boundaries of the Central Freight Association, the Western Trunk Line Association and other associations are given in the *Official Railway Guide*, published by the National Railway Publication Company, 24 Park place, New York. They are to be found on pages LXVII and LXXV. In some cases there are no definite boundary lines, but in all cases the names of the carriers members of the associations are given.

The classifications now in force have been outlined as follows by the Interstate Commerce Commission:

Classifications in Force in 1902.—At present there are three general freight classifications in use throughout the United States—namely, the Official Classification, the Southern Classification and the Western Classification. The application of these classifications is as follows:

First—The Official Classification applies generally in the territory north of the Ohio and Potomac rivers and east of Lake Michigan, Chicago and the Mississippi River to the Atlantic seaboard, except locally between points in the State of Illinois and between certain points in New England located on the Boston & Maine Railroad. This classification also applies to local traffic between points on the Chesapeake & Ohio and Norfolk & Western railways, and between certain points on these lines and points in what is known as Eastern seaboard territory, located north of the Potomac River. Through rates from points in Eastern seaboard territory to Nashville and Memphis, Tenn., and New Orleans, La., are also subject to this classification.

Second—The Southern Classification applies generally in the territory south of the Ohio and Potomac rivers and east of the Mississippi, except locally between points in the States of North Carolina, Georgia and Florida, and between points on the Chesapeake & Ohio and Norfolk & Western railways. The through class rates from points in Eastern seaboard territory to points in Southern territory are also, with a few exceptions, governed by this classification.

Third—The Western Classification governs in the territory west of Lake Michigan and a line drawn from Chicago to St. Louis, and in all the territory west of the Mississippi River, except locally between points in the State of Iowa. The class rates applying between Pacific Coast points and points in the territory Missouri River to Atlantic seaboard, inclusive, are also subject to this classification.

It should be stated that there are many exceptions to the application of the general classifications in each of the territories above described. Practically all railroads publish commodity tariffs which provide special rates on certain articles, which are, as a rule, lower than the rates provided for such commodities in the regular class tariffs. As before stated, such articles as grain, grain products, dressed meats, live stock, lumber.

coal, iron, oil, fertilizers, etc., are usually transported under commodity tariffs in practically all parts of the country. Nearly all roads also publish exception sheets, both local and joint, in which many articles are given a rating different from that provided in the general classification. All articles not provided with commodity rates, and which are not included in the exception sheets, when moving between interstate points, are carried under the general classification which governs the class rates in the territory where the shipments are made.

The three general classifications above referred to are prepared and published by classification committees, each committee being composed of the traffic officials of the principal railway lines operating in the territory governed by the classification. These committees are as follows:

The Official Classification Committee, with headquarters in New York City; the Western Classification Committee, with headquarters in Chicago, Ill., and the Southern Classification Committee, with headquarters in Atlanta, Ga. All changes in and revisions of the classifications are made and promulgated by these committees.

Sums of Locals Unlawful

To the Editor of Freight:

SIR—I have your favor of October 4, inclosing ruling of your Legal Department in regard to carriers' liability for routing freight, for which please accept my thanks.

I would like to trouble you once more for a ruling. According to the Interstate Commerce Commission, Tariff Circular No. 2-A, issued September 15, it will be a violation of the law to use the sums of the locals where they make a less rate than the published through rate. I wrote to the Interstate Commerce Commission asking if this would apply on business that moved before August 28, which is, I believe, the date the new law became effective, and they replied that it would. It seems to me that no law can be enacted that will apply on business that has already moved, as there is to be no "ex post facto" law passed, and it seems to me that this would be of that nature.

Thanking you in advance, I remain,

Yours truly,

J. F. STROMBECK.

MOLINE, Ill., October 8, 1906.

INQUIRY J. F. STROMBECK.

The inquirer refers to the Commission's circular No. 2-A. That circular reads in part: "When two or more connecting carriers establish a joint rate which is less or greater than the sum of their local rates, such joint rate is a change of rates and requires a notice of thirty days. In such case the joint rate, when duly established and in force, becomes the only lawful rate for through transportation."

Circular No. 4-A reads in part: "Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points, by the same route, such higher joint rate may, until December 31, 1906, be changed by re-

ducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission."

The weight of authority has always been that where there is a through shipment the through rate, if published and filed, applies, irrespective of the fact whether or not the sum of the locals be greater or less than the through rate. This is particularly true since the passage of the Elkins Law. For, by that law, the rate filed and published is conclusively deemed to be the legal rate. Recently a shipper attempting to evade the provisions of the Interstate Commerce Law billed a shipment to a junction point and from there to destination (both of which points were within the State), and the amount of freight on the local rates was less than the through rate. The carrier collected the through rate, and, upon suit brought to recover the excess, the court held that this was an evasion of the law and the shipper was not entitled to the benefit of the sum of the locals.

The Hepburn Law is not retroactive, and we think the interpretation of the Commission of the law as stated in this behalf is a correct interpretation of what the law has been for many years.

Care should be taken, however, to discriminate between this interpretation and arguing therefrom as to the reasonableness of either the joint rate or of the locals individually, or their sum.

A Routing Controversy

To the Editor of Freight:

SIR—We inclose herewith correspondence had with the Southern Railway in regard to protection of water competitive rates on lumber from Waynesville, N. C., to Philadelphia, Pa. While the papers will no doubt explain the matter fully, at the same time it is proper to state that the Southern Railway publish in connection with the Pennsylvania Railroad two lines of rates on lumber and other forest products, as follows:

First—Water competitive rates via Pinner's Point for Pennsylvania Railroad delivery in Philadelphia. These water competitive rates to Philadelphia do not embrace all of the Pennsylvania Railroad deliveries in Philadelphia, but only such as would be affected by water competition; that is, where the lumber could be hauled from schooner to points of deliveries at the less rate from the all-rail rates by Alexandria.

Second—The rates to Philadelphia from Carolina territory via Alexandria and the Pennsylvania Railroad include all deliveries on the Pennsylvania Railroad in Philadelphia and also to interior points taking the Philadelphia basis, such as Norristown, Reading, etc.

Third—The Southern Railway also publish water competitive rates via Alexandria and the B. & O., in order to allow the latter line to meet the competition via Pinner's Point and the Pennsylvania Railroad.

You will note from the bill of lading attached that Pennsylvania is specified in the routing. My contention is that, as the Pennsylvania Railroad is a delivering line, it was proper to state this on the bill of lading, and as no special instructions seemed to have been

given by the shipper, that we are entitled to the benefit of the lowest rate where there are two sets of rates in effect. As stated in my letter to the traffic manager of the Southern Railway, it is the writer's recollection that decisions have been rendered from the bench affirming my claim.

Will you not kindly look into this matter and give us the benefit of the opinion of your Legal Department, as well as your records bearing on similar cases.

Yours truly,

J. GIBSON McILVAIN & Co.

PHILADELPHIA, Pa., October 3, 1906.

INQUIRY J. GIBSON McILVAIN & CO.

The gist of these claims appears to be that the goods were shipped from Waynesville, N. C., to Philadelphia, and that the bills of lading contained no freight rate, but contained, after the word "route," the words "Penn. R. R." It appears from the correspondence that the goods actually moved over that route which has the higher rate of freight. The goods might have been delivered over Pennsylvania tracks at destination had they been actually transported over the cheaper route. The question, therefore, resolves itself upon the character of the interpretation of the words, "Route Penn. R. R." If these words are taken to mean Pennsylvania delivery at destination, the question resolves itself whether or not the goods should have been transported over one or the other of the two routes. If, on the contrary, these words indicate the route to be traveled by the property, there is little difficulty in determining that question.

We do not think these words can be interpreted to mean "Pennsylvania delivery." Delivery at destination via the Pennsylvania could have been effected by routing the goods either one of two ways. The Pennsylvania would take the property if shipped on the higher rate at Alexandria, or if shipped on the lower rate, through the P. B. & W. R. R., at Delmar. If the words "Penn. R. R." on the bill of lading mean the delivering road, which we are seriously inclined to doubt, and which is the most favorable interpretation for the inquirer, this delivery could have been accomplished by the transportation of the property over either of the routes. This would leave the carrier free to select which of the two routes should be traversed by the property. Had the rate been placed in the bill of lading, the carrier could not have exercised this election.

When the carrier is given property without routing instructions, it is its duty to select the usual, customary, reasonable and direct route. It does not appear that the route over which the property traveled is not a usual, customary, reasonable and direct route. The initial carrier is, we think, under the circumstances, justified in routing these goods via Alexandria, on the ground that, having an election, it may transport the property over any usual, customary, reasonable and direct route, and it chose to select that route over which the initial carrier had the longest haul.

Under all the facts and circumstances, and in consideration of existing statutes relating to rates, we

think the carrier is justified in refusing to pay the claim.

To the Editor of Freight:

SIR—I have your valued favor of the 10th inst., inclosing reply of your Legal Department to our inquiry of the 3d, which I have read with no little interest, and note that the vital point hinges on the proper interpretation of the words "Pennsylvania R. R." inserted on line in bill of lading designated for routing.

I also further note that it is the belief of your Legal Department that they do not think these words can be interpreted to mean Pennsylvania delivery. Will you please advise how they arrive at this conclusion? By reference to my previous letters you will note that special attention is directed to the fact that the water competitive rates via Pinner's Point applied for Pennsylvania Railroad delivery only.

If it be as you state, the carriers have a right to forward the traffic via the usual, customary, reasonable and direct route. Is it not reasonable to assume, indeed, if not a fact, that the route which gives the shipper the benefit of the lowest rate is not a usual, customary, reasonable and direct route? Certainly the shipper is entitled to the same consideration that the carriers display (as in this case), in securing the greatest revenue out of shipment.

We would also appreciate it if you would favor us with the exact wording of the new law relating to the protection of the lower rate where there are two rates in effect via separate and different routes.

Trusting that we are not exceeding the privileges granted by your Legal Department through your magazine, and thanking you for past favors, I am,

Yours truly,

J. GIBSON McILVAIN & Co.

PHILADELPHIA, October 10, 1906.

INQUIRY J. GIBSON McILVAIN & CO.

It is evident that the term "P. R. R." after the word "route" cannot mean solely Pennsylvania delivery. It is true, if routed via Pennsylvania to Philadelphia it can hardly mean some other delivery. It would have been impossible for the originating carrier to ship this car via Pinner's Point and at the same time route via P. R. R. Pinner's Point rates are made in connection with the N. Y., P. & N. R. R. While this road has a connection with the P. R. R., and has a financial connection with the P. R. R. system, it maintains its independence of name.

We are informed that freight originating at the place where the car in controversy originated might reach Philadelphia by one of three routes: Pinner's Point, Alexandria or N. & W. Ry. All of these are said to be usual, customary, reasonable and direct routes, and traffic moves freely over all three. The first mentioned is the cheapest, and rates on it are said to be made for the purpose of competing with water carriers plying between Norfolk and Philadelphia.

Liable for the Additional Charges

To the Editor of Freight:

SIR—Inclosed please find copy of our letter in claim against the Southern Pacific Railroad for over-

charge on shipment of carpet. Also find attached copy of Southern Pacific Railroad Company's letter, declining claim and giving their reason for same.

Before receiving this letter from Mr. Townsley we were told verbally by a representative of his office that the Southern Pacific Railroad Company was under no obligation, only as a matter of accommodation, to have the shipment diverted, and that their failure to comply with our request does not render them liable for overcharge claimed by us. This shipment, as you will understand, was not diverted en route, but was allowed to reach its original destination, and from there was reconsigned to St. Louis by the railroad company, without authority from any one in position to have it reconsigned.

We filed claim for freight charges from San Francisco to St. Louis, plus 38 cents per cwt., that being the rate from New York to San Francisco over the rate from New York to St. Louis via Galveston.

We ask your opinion whether or not we are entitled to a refund as claimed.

Apologizing to you for taking up your valuable time with small complaints, and thanking you in advance for a reply, we are

Very truly yours,

J. KENNARD & SONS CARPET CO.

St. Louis, October 16, 1906.

Copy.

J. K. & S. 1668.

J. KENNARD & SONS CARPET CO.

St. Louis, August 8, 1906.

Mr. L. E. TOWNSLEY,
Coml. Agt., So. Pacific Ry. Co.,
City:

DEAR SIR—We inclose you herewith papers in the above numbered claim for \$57.28, which represents overcharge in freight on 8 rolls of carpet shipped by Alex. Smith & Sons Carpet Co. for our account from Nepperhan, N. Y., April 14, 1906, consigned to the Cordes Furn. Co., San Francisco, Cal. Please see copy of our wire 4/20/06 to Alex. Smith & Sons Cpt. Co., instructing them to have shipment diverted to us at St. Louis. Also see letter from Alex. Smith & Sons Co. 4/21, replying to wire, advising that they had that day, April 21, 1906, requested the R. R. Co. to divert shipment to us at St. Louis.

As shipment could not have been caught before reaching Galveston, we took up with your office on April 23d, who wired agent at Galveston at 12:10 p. m. on that date, to not allow shipment to get by that point en route to San Francisco. We made this request upon your office to make doubly sure that shipment would be diverted, but notwithstanding all our efforts, shipment was allowed to pass Galveston and reach San Francisco before request for diversion was acted upon. You will note that shipment was out of New York ex Steamship El Rio No. 121, covered by Sunset Gulf N. Y. W/B 15278, April 19, 1906.

See attached So. Pacific Co.'s original shipping receipt, dated at San Francisco 5/26/06, which shows this reference; also shows L. J. S. R/C No. 7800, dated May 3, 1906.

We think you will agree with us that we took proper measures and acted in time to have shipment diverted, and that it was not diverted was no fault of ours.

We trust you will find it convenient to give this claim prompt and favorable consideration.

Please acknowledge receipt of papers, giving us your claim number.

Very respectfully,

J. KENNARD & SONS CPT. CO.

Copy.

St. Louis—9457
Kennard—1668
Oct. 10, 1906.

J. KENNARD & SONS CARPET CO.,
St. Louis, Mo.:

GENTLEMEN—I return herewith papers inclosed with your letter, Aug. 8th, in regard to your claim No. 1668.

We feel that we did everything we possibly could to handle the shipment this claim is based on in accordance with your wishes, and as the failure to accomplish this end is due to the extraordinary conditions existing at the time, and not to any neglect on our part, we must respectfully decline to pay this claim.

(Signed) L. E. TOWNSLEY,

General Agent.

INQUIRY J. KENNARD & SONS COMPANY.

The owner of property, be he consignor or consignee, has absolute power or dominion over freight which has been given to a carrier for transportation, subject to the contract by which the goods are to be carried. In a well considered case the court said: "The carrier is employed as bailee of a person's goods for the purpose of obeying his directions respecting them, and the owner is entitled to receive them back at any period of the journey when they can be gotten at. To say that a carrier is bound to deliver goods according to the owner's first directions is a proposition wholly unsupported either by law or common sense. I can well understand a case of goods being placed in such a position that they cannot easily be gotten at, though it is usually otherwise."

Under the rule of law just cited, the owner can exercise the right of stoppage in transit or a right to divert goods to a destination other than that first mentioned. Some courts have held that where the goods are stopped short of their destination or are diverted at an intermediate point to a destination other than the first mentioned, the carrier is entitled to his freight from point of origin to original destination. This rule was laid down in a case involving water carriage, and in maritime law freight occupies a different position with respect to the goods and the vehicles for conveyance than in rail transportation.

It was clearly the duty of the railway in this case to have caught the shipment at Galveston, and take it from there to St. Louis, as directed. The carrier can only be excused from this duty by facts and circumstances which clearly prove the impossibility of such action. Admitting the first contention of the carrier, that it is under no obligation to divert goods in transit, in this case the carrier waived this defense by attempting to divert them. The second defense is that the failure to accomplish the wishes of the owner was due to the "extraordinary conditions existing at the time." No statement is made concerning what these "extraordinary conditions" are, and we are inclined to think that this general term has been used to cover up the neglect on the part of the carrier.

The movement of the freight from San Francisco, originally destined to St. Louis, is entirely unwarranted. The order of the owner of the goods was to divert them at Galveston to St. Louis. When the goods had reached original destination, in accordance with the shipping contract, the carrier had performed its duty regarding the transit, but it had failed to obey the order of the shipper concerning the diversion, for which failure, unless excused, it is liable.

Subject to such facts and circumstances concerning the receipt and transfer of the property from water to rail transportation at Galveston, the carrier is liable for the additional freight imposed upon the shipper.

Every traffic manager should have a FREIGHT CLAIM INDEX AND RECORD. It saves time and money. Price \$5.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Responsibility for Damage

The difficulties encountered by the consignor or consignee who intrusts his property to a carrier and who finds that the property, when it arrives at destination, is damaged, is typified in the case of *Rolfe v. L. S. & M. S. Ry. Co.* The shipper in this case delivered an automobile in good condition to a carrier at Denver, consigned to a Michigan point. The machine ran through in the same car. When the car was opened at destination it was found that the machine had not been braced to guard against the motion caused by the transportation, but was held by nailing pieces on the car floor and back of the wheels. The machine had been jolted over these strips and had been considerably damaged. Relying upon the presumption that where transportation is conducted over connecting carrier the final carrier is liable, suit was instituted against the Lake Shore. The shipper, however, was unable to prove that the damage occurred upon the final carrier, and the court held that it could not assume that the damages were caused by the final rather than by the initial carrier. The court said: "There is no testimony to show that this car was subjected to any unusual jolting by defendant while under its control; * * * it must be held that the proof fails to fix the responsibility upon the defendant."

While it is good law that a carrier is only responsible for its own acts, and in order to make it liable for damages one must be able to prove a case, the total impracticability of proving a case where loss and damage occur in the event the shipment is over connecting carriers is an ever present one. All the owner of property knows or can possibly know is that the goods were delivered in good condition; that they were received in bad condition. If, under existing law, he cannot point his finger to the time, place and carrier where the loss and damage occurred, his suit is of no avail. Manifestly, in justice, when goods are delivered to a carrier or set of carriers for transportation, there ought to be a liability to deliver the goods to destination in the same condition in which they were received or the shipper be made whole for his injury.

Shippers' Rights in Car Distribution

The Circuit Court of Appeals for the Fourth Circuit has held in the case of *U. S. v. N. & W. Ry.* that where a railroad company and coal shippers in a certain field had fixed a basis which should be considered equitable for the distribution of cars between shippers such arrangement does not relieve the company from the provisions of the Interstate Commerce Act, by which it is required that shippers shall be treated without discriminations, nor will such an arrangement prevent one of the shippers from maintaining his

rights by mandamus in a federal court seeking to compel the railway to furnish him an equitable proportion of the cars.

In an opinion of Judge Pritchard, deciding the right of the relator to the mandamus to compel the supplying of cars and interpreting sections 3 and 10 of the Interstate Commerce Law, said:

The purpose of this act is to place "all shippers on an absolute equality." The sections in question were intended to prevent discrimination in all branches of freight traffic. The language employed therein is plain, and leaves no doubt as to the true intent and meaning of Congress in the enactment of this legislation. There is nothing in the Interstate Commerce Act, nor in the acts supplemental thereto, which undertakes to describe any particular method of service by common carriers, either in equipment and allotment of cars or the manner of movement of traffic. It leaves the carrier free to make such an arrangement with its shippers as it may deem proper, but the basis of distribution must be such as to put "all shippers on an absolute equality," and to transport traffic for each shipper "upon terms and conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper," provided that it does not give "undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever, or subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable preference or disadvantage in any respect whatsoever."

* * *

The agreement in question is clearly in aid of the Interstate Commerce Act, and, at most, is but an expression of opinion by the carrier on the one hand and the shipper on the other as to what they deem a proper basis for an equitable distribution of cars among shippers. Some such arrangement was necessary in order to enable the carrier to properly understand what would constitute a compliance with the statute on its part, and at the same time to enable the shipper to ascertain and enforce his rights in accordance with section 3, in the event he should be of opinion that the acts of the carrier were such as to amount to a discrimination against him as contemplated by the statute. It merely indicates a disposition on the part of the shipper to accept his proportionate share of the cars to be allotted by a particular method of distribution as being a substantial compliance with the statute by the carrier. To hold otherwise would be to decide that the carrier by entering into an agreement with the shipper as to the basis or means by which the distribution of cars is

to be made could thus by indirection nullify the plain provisions of the statute. The only defense which the shipper could interpose as a reason for not complying with the act would be to show that such basis was not a reasonable or just one, and that is a matter which cannot be considered in the present state of the pleading, and one which the court would not have been justified in considering in passing upon a motion to quash.

* * *

It matters not how petitioner's right to an equal distribution of cars may have arisen, whether by contract, statute, or common law. The plaintiff in error avers that it has such legal right, and that the defendant in error is discriminating against complainant. The Interstate Commerce Act clearly forbids the discrimination described in the bill, and we are therefore of the opinion that the court has the power under the Interstate Commerce Act and the Act of March 2, 1889, supplemental thereto, to prohibit such discrimination. A careful consideration of the statutes bearing on this subject leads us to the conclusion that to adopt any other construction would be to render the Interstate Commerce Act, insofar as it relates to discrimination, of no force, and to defeat the obvious purpose for which it was enacted. (143 Fed. 266.)

IMPORTANT DECISIONS IN BRIEF

Where one made a shipment of cattle under a contract with his vendee, by which contract calves were to go with the mother cows, and, it appearing that some of the calves died en route, it was held that the buyer was entitled to recover from the carrier for the calves killed; the question involved was the ownership of the calves, they being "thrown in" without any compensation specifically provided for payment for them. (I. & G. N. R. Co. v. Jones, 91 S. W. 611.)

Where a carrier having in its possession goods billed to consignee or order, and made delivery of the goods to consignee without surrender of the bills of lading, it was held that the holder of the bills of lading was entitled to receive from the carrier damages due to the wrongful delivery. (Chesapeake S. S. Co. v. Merchants Nat. Bank, 63 Atl. 113.)

Where a carrier purchased a wharf upon a navigable river, and it appeared that the wharf was the only means by which the people of the community could reach the river and vessels plying thereon, it was held that such wharf was impressed with the public interest and that the carrier could not convert it into private property so as to exclude the public and other carriers from using it, paying therefor a reasonable amount. (Weems S. Co. v. People's S. Co., 141 Fed. 454.)

Where household goods were injured during transportation by a carrier, it was held that the measure of damage was the difference between actual value of the goods just before and just after the injury, and could not be measured by the difference in market value of similar goods at second hand stores at destination. (Benedict v. C. R. I. & P. Ry., 91 S. W. 811.)

Where one shipped a thresher and it was damaged, it was held that the measure of damage was the difference between the value of the thresher in its damaged condition at destination and its sound value at destination. And it was further

held that where one had contracted to thresh wheat and was unable to do so by reason of the injury to the machine, he was entitled to recover from the carrier damages by reason of his failure to comply with his contract, provided he had notified the carrier's agent prior to shipment. (C. R. I. & P. Ry. v. Calvert, 91 S. W. 825.)

Where one purchased a quantity of feed for cattle and gave notice to the agent at destination of the purpose for which he purchased the feed, and also gave notice to the chief train dispatcher of the defendant, it was held that such notice was sufficient to bind the carrier. And if there was unreasonable delay in the transportation the carrier was liable for the depreciation in the cattle resulting from the delay in the transportation; but the carrier was not liable for damages due to the failure of the purchaser of the feed to use reasonable diligence in securing other feed for the stock. (I. C. R. Co. v. Mossbarger, 91 S. W. 1121.)

In the absence of misrepresentation, fraud, or concealment, a receipt issued by an express company is a contract between the company and the shipper, and both parties are bound by its terms. And the shipper is estopped to set up his failure to read the receipt in order to prevent its legal effect. The court said: "If the receipt was made to her, she was bound to know its contents, unless prevented by some artifice or misrepresentation." (Hoffman v. Metropolitan Exp. Co., 97 N. Y. Supp. 838.)

Where a carrier, without lawful excuse, delivers to a notify party, without surrender of the bill of lading, goods covered by it, it was held liable. (A., T. & S. F. Ry. Co. v. Schriver, 84 Pac. 119.)

Where a suit was brought involving the classification of freight, the consignee contending that the classification should be interpreted so that the goods would take third class, but the railroad contending that they should take first class, it was held that the classifications when agreed upon and filed according to law were binding both upon the shipper and the railway, and that neither has a right to deviate from them. The court said: "All contracts entered into with common carriers are presumed to be governed by the classification sheet in force at the time of the shipment. Whether such classification is just or unjust, it is nevertheless binding, both upon the common carrier and the shipper so long as the same remain in force. The tariff as fixed must govern, regardless of any contract for a greater or less rate." (Smith v. G. N. Ry. Co., 107 N. W. 56.)

Where a carrier undertook to transport goods beyond the terminus of the initial carrier, it was held liable for delay in transfer from the terminus of the initial carrier to destination, even though the transfer was to be made without charge to the shipper. (Isham v. Erie R. Co., 90 N. Y. Supp. 609.)

Where goods were shipped to order with instructions to notify a party and they were held at the terminus of the initial carrier at the request of the notify party, the carrier was held liable for this delay on the theory that the notify party had not sufficient authority to justify his notice. (Isham v. Erie R. Co., 90 N. Y. Supp. 609.)

A bill of lading for potatoes contained the condition that "no carrier * * * shall be liable after said property is ready for delivery to the next carrier or consignee." The potatoes were held in freezing weather at the request of the notify party until he should give instructions for delivery by lighters. The potatoes were frozen, and it was held that the carrier was responsible for the loss upon the ground that even though a carrier be exempt from liability, he is not exonerated from the exercise of a fair degree of diligence as a carrier of the goods. (Isham v. Erie R. Co., 90 N. Y. Supp. 609.)

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

H. S. Kealhofer has assumed his new duties as manager of the Montgomery Freight Bureau.

All railroads in this State suffered more or less from the various storms of the last month.

CALIFORNIA

There was a serious freight blockade in San Francisco and Oakland during the middle of the month. An embargo tying up shipments went into effect October 18. On that date and for some days thereafter, no freight was received for shipment to the cities named or forwarded. Over 3,500 cars were standing idle on the tracks. Cars had been coming into the city at the rate of over 400 every day.

The Coos Bay Lumber & Coal Co. is to build a line five miles in length, from the vicinity of Beaver Hill to South Slough, an arm of the Bay, and all because the Coos Bay, Roseburg & Eastern, a recently acquired Southern Pacific property, is unable to provide a service sufficient for the needs of the lumber concern.

The Southern Pacific, Texas Pacific and Missouri, Kansas & Texas have jointly formed the Southern Fruit Dispatch Company for the quick transportation of fruit to Kansas City, St. Louis and Chicago, and thence on to New York and the East. The first train left Los Angeles October 15.

The United States District Attorney at Los Angeles is investigating the charges of violation of the rebate law in Southern California. The investigation may extend to citrus fruit. The division of the orange shipments by the Harriman line, the Santa Fé and the Salt Lake roads is also the subject of investigation.

The freight movement from California East is really the cause of the congestion in California. It is breaking all records.

California fruit growers intend to ask the Interstate Commerce Commission for a ruling on the subject of diverted shipments. Before the new law went into effect, shippers had the privilege of billing fruit eastward, and not designating any particular destination. The car could be diverted from one market to another and arrive at that point where the prices were the best. Attorneys of some of the large railroad companies have taken the stand that diverting shipments is illegal. The same rule has been applied in some cases to lumber and is raising a tempest of protest.

The Sacramento Jobbers' Association is much alarmed over the freight situation and has had several conferences with Southern Pacific officials on the necessity for increased facilities.

The Southern Pacific, beginning October 10, made a 25 per cent. reduction on all goods shipped over its lines under refrigeration.

The manufacturers located on the upper Oakland Harbor, near the tidal canal, demand of the City Council that no franchise for spur tracks connecting rail lines or similar ways through and adjacent to their property be granted to any railroad company unless there is a provision that will insure a convenient interchange of track switching of the cars consigned to or coming in from any other rail line than that of the company

to which the franchise is directly granted.

COLORADO

The Denver, Northwestern & Pacific Railway has issued a map of the proposed route with a statement by President David H. Moffat, who says, among other things, that the company is organized, not to invade the territory of any other railroad company, but to open to development and traffic a region in Northwestern Colorado and Eastern Utah larger than the State of Pennsylvania, which is now without a single mile of railroad. When the new road is completed, the distance over it between Denver and Salt Lake City will be more than 100 miles shorter than by any other route. The pamphlet which is being circulated by Robert F. Hunter, of Denver, sales agent of the "Moffat Road" town sites, contains the report of H. A. Sumner, chief engineer, an estimate of prospective traffic by A. C. Ridgway, and a description of the natural resources of the country tributary to the proposed route, by Thomas Tongue.

George J. Kindel, who recently brought suit before the Interstate Commerce Commission against the Burlington and New York, New Haven & Hartford Railroads for discriminating against Denver in the matter of railroad rates, and whose petition for reparation on a test shipment was denied, has filed an application for a rehearing.

Mr. Kindel's application states that the Commission erred in deciding that an order for reparation was not required and in failing to make the railroad pay him, as damages, the sum of \$11.77.

In his original complaint Mr. Kindel alleged that the rate from Boston points to Denver on cotton piece goods was \$2.24 per 100 pounds in less than carload lots, and \$1 per 100 pounds in carload lots; that on August 4, 1903, a shipment of cotton piece goods was made to him at Denver from Norwich, Conn., on which the two carriers charged and collected \$2.24 per 100 pounds. This rate, he alleged, was excessive, unreasonable, and, as compared with the rates to San Francisco and Portland, Ore., a discrimination against Denver.

The Commission's conclusions were that the shipment in question was part of Mr. Kindel's "scheme" for attacking the comparatively high rate from Missouri River points to Denver, relief from which had been granted; that substantial justice would be satisfied with the establishment of a reasonable rate and that an order for reparation is not required.

Mr. Kindel is backed by several of the big jobbers of Denver in his fight for better rates, and he is most desirous of securing a judgment for damages against the two lines mentioned, although the amount involved is trivial.

Freight rate reductions are announced by two transcontinental railroads entering Denver, and two others which connect with Pacific Coast lines. This will mean the opening to Denver manufacturers and jobbers of territory as far south as the Gulf of Mexico, and as far west as the Pacific Ocean with regard to several commodities in which, heretofore, Denver has been unable to compete with Eastern, Western and Southern manufacturers.

One of the greatest reductions announced is that of the Santa Fé and

Southern Pacific railroads on Colorado manufactured brick. Both systems have granted a cut of 10 cents per 100 pounds to all Pacific Coast terminal points, making the present rate 40 cents per 100.

The same roads make a reduction on anhydrous ammonia from \$3 per 100 pounds to \$1.40, and it insures the immense increase in the manufacture of ice making ammonia for shipment in competition with all leading Pacific Coast points.

The El Paso & Southwestern Railroad announces that it will in future receive for shipment over its lines mixed carloads of ammonia, sulphuric, nitric and muriatic acids at a flat rate of \$1.75 per 100 pounds.

Still another important reduction granted to El Paso and Texas points is that on stoneware, pottery and earthenware. This cut is from 87 to 49 cents per 100 pounds, and goes into effect October 29.

GEORGIA

The Southern Railroad is testing in the courts the validity of the law prohibiting the running of freight trains in the State on Sunday. The contention is that the law is a burden upon interstate commerce, and in restraint of such commerce, and it is therefore in conflict with the provisions of the Constitution of the United States; also that the State has no right to designate one particular day, as fixed by any religious sect, as the Sabbath.

Capitalists of Savannah and Statesboro have been given a charter to build a railroad from Atlanta to Savannah. It is thought in some quarters that the new road anticipates the extending of the Western & Atlantic—the State road—to the sea.

The case against the railroads in the vicinity of Augusta brought by the cotton mills for excess rates has been settled and all parties were satisfied with the settlement.

It will be remembered that the Enterprise and other cotton mills of Augusta brought suit against the railroads, alleging the causing of the freight rates on the river boats to be increased by the Tariff Association, and later it was forced upon them to cut the rate or lower it to the old figure. The sum sued for by the attorneys in the case was for the entire alleged overcharge, which was a considerable sum, it being up in the thousands.

There has been a strike of machinists on the Southern Railroad. The men demanded 25 cents per day increase. The railroad officials offered an increase of 15 cents per day to the machinists employed at the Atlanta shop and an increase of 5 cents per day to the employees at the Spencer, N. C., Charleston and Knoxville shops. This was declined, and the road refused to consider the question further. The following shops are affected by the strike: Alexandria, Va.; Manchester, Va.; Spencer, N. C.; Asheville, N. C.; Columbia, S. C.; Charleston, S. C.; Atlanta, Macon, Ga.; Birmingham, Selma, Ala.; Greenville, Miss.; Knoxville, Sheffield, Ala., and Greenville, S. C.

ILLINOIS

Representatives of shippers' associations throughout the country will meet in Chicago November 8 to consider a uniform bill lading for all railroads.

Traffic managers of manufacturing and commercial concerns are exercised over the recent dissolution of reciprocal switching arrangements by the St. Paul

& Northwest. Since then local switching has been charged on the Illinois distance tariff, increasing the rate materially, in some instances, according to classification, to \$35 per car. Transfers on through shipments cost as high as \$5 a car, of which the receiving railroad absorbs \$3 and the shipper the remainder. Representatives of 100 large concerns have appointed a committee to interrogate the railroads. Some shippers threaten to take the matter before the Interstate Commerce Commission.

Six suits to recover \$50,000 alleged to have been collected in extortionate freight rates during the past five years have been brought against the Alton by the Illinois Freight Audit Co., acting for 216 shippers on the line of the railroads, whose individual claims average from \$50 to \$100 each. The law under which the cases are brought has been upon the statute books since 1871. If fines were imposed for each violation charged, they would aggregate \$1,100,000,000. The law says a railroad shall not charge more for carrying freight from East St. Louis to Springfield than it does for carrying freight of the same class and in like quantity from East St. Louis to Peoria, the distance from East St. Louis to Peoria being about twice the distance from East St. Louis to Springfield. Notwithstanding this law, the Alton is said to have charged more for carrying freight from East St. Louis to Springfield than from East St. Louis to Peoria. The same discriminations have been made all over Illinois. The effect has been to build up, for instance, the city of Peoria against Springfield. Under the plan of the Audit Company a large number of claims have been collected against several roads. The railroads have recognized their liability and paid the claims as fast as their auditors looked them over. When President Felton, of the Alton, returned the claims under which these suits are to be prosecuted were repudiated.

James B. Hogarth, secretary of the Chicago City Railway Company, has admitted that he is the man President A. B. Stickney, of the Chicago Great Western road referred to as "the man who had been driven out of business and made an anarchist by the Union Pacific's contract with the Peavey Grain Company for elevation allowances at the Missouri River."

INDIANA

The Evansville & Terre Haute Railroad Company has found it necessary to enlarge its freight depot at Evansville.

A conference of traffic officials of several of the Indianapolis railroads with the Indianapolis Freight Bureau was held at the bureau office in Indianapolis recently, to consider the question of reducing the class rates from Indianapolis to Indiana points. The meeting was the result of a complaint from Schnull & Co., of excessive rates charged by the Big Four to points on the P. & E. division. As a revision of rates on that line would necessarily affect rates on other roads in adjacent territory the officials arranged for the conference with a view to reaching an understanding with the bureau looking toward a general readjustment of class rates over the several lines in the State. There were present at the meeting General Freight Agent G. H. Ingalls and Assistant General Freight Agent Ford Woods, of the Big Four; General Freight Agent William Hodg-

don and District Freight Agent A. D. Pendleton, of the Vandalia; Sam B. Sweet, of the L. E. & W.; A. H. McLeod, general freight agent of the C., H. & D.; George E. Griffin, of Schnull & Co., and J. Keavy, commissioner, Indianapolis Freight Bureau. The result of the conference was assurance from the railroads that they would arrange for a meeting of officials of all Indiana roads during the coming week to adopt a uniform mileage scale of rates on a lower basis than that now in effect; also a general revision of all class rates in Indiana subject to the approval of the State Railroad Commission and acceptance by interested shipping interests here.

IOWA

In a recent issue, *Wallace's Farmer*, in discussing freight rates on seed corn, said: "We learn that the official classification committee, which makes the classification of different kinds of freight and prescribes the rules under which it must be shipped, has recently adopted a rule to the effect that hereafter seed corn shipped in the ear must not be shipped in bags or in open crates, but must be tightly boxed, and that this committee has also changed the classification under which seed corn in the ear is shipped. If this ruling should be enforced it will result in not only seriously crippling the trade in seed corn in the ear, but will greatly interfere with the improvement of corn. As readers of *Wallace's Farmer* know, we have for years past urged upon them the importance of buying seed corn only in the ear. In no other way can the purchaser know what kind of corn he is getting. In our judgment the purchase of seed corn in the ear is the greatest step toward the improvement of the Western corn crop. This ruling of the official classification committee is, therefore, a matter of vital public interest. The objection to shipping seed corn in bags or in tight crates is that when shipped in this way there is great danger of the vitality of the germ being injured. Properly cared for seed corn is thoroughly dry; when it is shipped it is exposed to a much damper atmosphere than that in which it has been kept, and as a result it will take up moisture. If shipped in crates so made as to give free circulation of the air through the corn it is in little danger of being injured; but if it is packed in tight boxes or in bags a very considerable per cent. of it may be so damaged as to destroy or very greatly impair its vitality. "The railroads of the West have taken a very active interest in the work of improving our seed corn. They have spent thousands of dollars in running seed corn gospel trains, carrying seed corn experts to lecture to farmers along their lines of road. Surely they do not wish to undo the splendid work they have been carrying on by adopting a ruling which will discourage, if not almost prohibit, the shipment of seed corn in the ear. The railroad people can well afford to carry seed corn in the ear at the very lowest freight rate, for the same reason that they have spent money to educate the people on the value of better corn. "The official classification committee is composed largely of representatives of Eastern roads, and they have made the ruling on this question probably without knowledge of the effect it will have on the corn growing interests. We feel sure that when they become familiar with the situation they will promptly change this ruling and permit seed corn to be shipped as hereto-

fore in open crates which give thorough ventilation, and at the lowest possible freight rate."

Iowa farmers are interested in a railroad rate proposition that especially affects the dairy interests. The chief point to the proposition is that it costs 47 cents to ship a 10 gallon can of cream which will weigh 100 pounds from Webster City to Dubuque, and will cost but 40 cents to ship the same can, or another one exactly like it, from Webster City to Chicago. The discrimination works to the advantage of manufacturers of butter in Chicago and against the manufacturers of butter in Dubuque. Dubuque and Chicago butter manufacturers are in direct competition. All dairy products go East to find a market.

LOUISIANA

Paul Gelpi & Sons, of New Orleans, and a number of other local shippers recently appeared in a petition in the United States Circuit Court asking for a judgment to set aside a decision of the United States Board of General Appraisers on sixty or more shipments of merchandise received at New Orleans on various ships during the last two or three years. The petition alleges that the Collector of Customs erred in classifying the goods mentioned, and that the duties charged were excessive and not what they should have been. It is further related that the decision of the Collector was sustained by the Board of General Appraisers and a ruling of the court is asked to set aside this sustaining decision. Judge Parlange issued an order that the record in the case be filed with the clerk of his court in order that the proper investigation might be conducted.

Mayor Behrman, of New Orleans, has declined to intervene in the controversy over the port and shipping charges in that city. Representatives of the Leyland and the Elder-Dempster lines have objected to the charges made by the Board of Port Commissioners under the new system of measuring the capacity of vessels and have filed a protest.

MARYLAND

The strike in Baltimore of steamboat captains, licensed deck men and other steamboat employes has created a serious situation in that city. The strike affects 2,200 miles of routes of the Maryland, Delaware & Virginia, and the Baltimore, Chesapeake & Atlantic steamship lines. Hundreds of thousands of dollars worth of goods are stored on wharves and in warehouses in Baltimore. Other hundreds of thousands of dollars worth of goods are on wharves at 265 landing places on the Chesapeake Bay and its tributaries to which the vessels of the two companies ply. An investigation by the Maryland Bureau of Statistics and Information is being made.

Railroads centering in Detroit announce that they are soon to inaugurate a new rule cutting down the time which freight may lie in freight houses unclaimed from five days to forty-eight hours.

Evidence tending to show that former officials of the Ann Arbor Railroad Company, doing business in Ohio, had paid rebates to the Toledo Ice Company, whose officers were convicted and sentenced to serve terms in the workhouse last summer for violation of the State anti-trust laws, is said to have been discovered by the Interstate Commerce Commission. The matter has been

placed in the hands of the Department of Justice, and the United States Attorney for the Northern District of Ohio will probably be instructed to place the facts before the Federal grand jury. The matter has been under consideration by the Interstate Commerce Commission for several weeks. The men against whom proceedings will be instituted are said to be Wellington R. Burt, of Saginaw, Mich., and Harry M. Ashby, of Toledo, Ohio, former president and general manager, respectively, of the Ann Arbor Railroad Company.

MINNESOTA

Following extensive orders last year at this time for similar material, the Steel Corporation has contracted for much new equipment for delivery early next spring. Included in the lot are twenty steam shovels, twenty-five locomotives and 400 mine cars, all of which are for use on the Mesaba range, where from this time forward the big company will operate much heavier than has ever been known in the Lake Superior region. A new property to be opened next season, if present plans are adhered to, is the Gilbert, at Sparta. The Ohio and Norman tracts, at Virginia, are being developed, and extensive stripping is in progress in the Bovey district on the Western Mesaba. In addition, similar work of very great extent is called for by the terms under which the so-called Hill holdings have been taken over.

MISSISSIPPI

In the Hinds County Circuit Court the cases of Wirt Adams, State Revenue Agent, v. the Gulf & Ship Island and the Yazoo & Mississippi Valley roads were called for hearing, and Judge Miller overruled the demurrers filed by defendants, and ordered judgments entered. The amount recovered from the Yazoo & Mississippi Valley system is about \$21,000, while the judgment against the Ship Island system amounts to about \$6,000. These suits are based on the legislative act of 1898, permitting the assessment of a special privilege tax of \$10 per mile on all railroads in the State claiming exemption under their charters from supervision by the Railroad Commission on Maximum and Minimum Freight Rates.

Arguments will be delivered before the United States Supreme Court next month in the case of the Mississippi Railroad Commission v. the Alabama & Vicksburg Railway, better known as the Meridian grain rate case, wherein the commission is seeking to compel the railroad company to promulgate a rate of three and one-half cents per 100 pounds on grain and grain products shipped from Vicksburg to Meridian. The State Supreme Court sustained the order of the Railroad Commission, and the company appealed chiefly on the ground that the proposed rate is unremunerative. Hon. Monroe McClurg, of Greenwood, who was retained in the case by the Meridian Board of Trade, will represent the Railroad Commission in the arguments at Washington. Mr. Hall, general counsel of the Queen & Crescent system, and members of the Washington bar will appear for the Alabama & Vicksburg road.

The new freight depot of the Illinois Central, at Jackson, is completed.

MISSOURI

The freight business on the old Dodson Dummy line, in Kansas City, is increasing rapidly. One hundred cars of freight a month are now being handled.

An electric locomotive will be placed in service on the line January 1, to haul freight from the connecting railway lines. The new engine is to be an eight-wheeler, equipped with four 100 horsepower motors.

A new freight house to cost \$350,000 will be built at Kansas City by the Missouri Pacific if the City Council will grant the company an extension of thirty years on its siding franchises.

That independent railroads carrying freight out of St. Louis for Illinois and Eastern points have the same facilities and make the same rates as railroads belonging to the Terminal Association, was developed at the hearing of the proceedings brought against the Terminal Association by the United States Government. It also developed that since the sale of the Interstate Car & Transfer Company coal merchants have secured a lower rate for transfers across the river to the amount of 10 cents a ton.

NEBRASKA

The Northwestern Railway Company will build a new freight depot and enlarge its freight yards in Fremont.

Secretary Whitten, of the Commercial Club, of Lincoln, has received notice of further reductions in the rate on canned goods from Iowa points to Lincoln. The Great Western, in connection with the Union Pacific, has announced a rate of 20 cents per hundred on canned goods from Eastern Iowa points to Lincoln. This rate is good from Dyersville, Waterloo, Cedar Falls and Waverly. The Rock Island recently made a rate from the same points of 22.94 cents per hundred, and this reduction on the part of the Great Western will force further reductions on the part of the Rock Island. The Great Western also announces a rate of 12 cents per hundred from Harlan and Minden in Iowa. The Rock Island reduced the rate from Atlantic, Ia., from 19.28 cents per hundred to 14.28 cents per hundred. The reduction made by the Great Western will mean a reduction of about \$15 per car to the jobbers of Lincoln.

Nebraska will vote on November 6 on a proposed constitutional amendment providing for a State Railroad Commission with power to prohibit rebates and discriminations and to regulate freight and passenger rates within the State. Around this proposed amendment the two parties have erected platforms consisting almost entirely of railroad planks.

NEW JERSEY

An important joint meeting was called recently by the Committee on Transportation and Freight of the Newark Board of Trade, the meeting taking place at the Board rooms, 704 Broad street. Isaac F. Roe, Franklin L. Lewi, Abram Rothschild, C. A. Giese and William O. Kuebler represented the Board of Trade Committee. The New Jersey Lumbermen's Protective Association was represented by J. F. Glasby, James M. Reilly, and Isaac E. Hutton, of Ridgewood, N. J. The Mason Material Dealers' Association was represented by George Cabell, of Wanoque, and Edwin Nickerson, of Ridgewood. The North Jersey Material Men's Club was represented by Fred. H. Thrift, of Paterson. The Essex County Material Men's Club was represented by T. A. Murphy, Wiley E. Clark and F. L. Heidritter. The meeting was opened by the election of Isaac F. Roe as chairman. The report adopted by the Board of Trade at its meeting October 10 was submitted to the joint

committee. After discussion it was voted to indorse the recommendations contained in the report. A general discussion was then had on the subject of freight demurrage charges, the result of which was a decision to advocate the organization of a State league of shippers and receivers. Franklin L. Lewi moved that it was the sense of the meeting that such a society be perfected for the purpose of compelling the railroads to adjust present difficulties and particularly to take action against unjust charges for car demurrage. It was agreed to appoint a committee composed of one representative from each association at the joint committee meeting, this body to meet F. E. Morse, manager of the New York & New Jersey Car Service Association, at which time the troubles complained against by our merchants and manufacturers will be fully discussed. It is further agreed by the committee to submit a request to the Car Service Association for a reduction in the amount of car service charges on the ground that the railroad act of 1903 does not support or justify the railroads in imposing a penalty of \$1 a day. It was also agreed to ask for an extension of time for the removal of freight from cars from forty-eight hours to ninety-six hours. A clause to compel carriers to give a statement of routing of cars whenever demurrage charges are made to show unnecessary detention or delay was incorporated in the statement of the committee's position on the subject. Compulsory delivery of freight on private switches was advocated. The committee which met Mr. Morse on Monday is composed of the following: Isaac F. Roe, Newark Board of Trade; J. F. Glasby, New Jersey Lumbermen's Protective Association; George Cabell, Mason Material Dealers' Association; Fred. H. Thrift, North Jersey Material Men's Club; Wiley E. Clark, Essex County Material Men's Club.

NEW YORK

The Adirondack Lumber Manufacturers and Shippers' Association is still endeavoring to obtain better rates from the New York Central Railroad.

The new Lackawanna Steamship Company, owned largely by stockholders of the Lackawanna Railroad, has closed a contract with the American Ship Building Company for eight big freighters.

It is thought in export grain trade circles that the port of New York will benefit by the new rate law. Advices from New Orleans that the roads there have, on advice of counsel, separated their railroad and elevator interests on the ground that the former method of connecting the two in rate making is a violation of the new Interstate Commerce Act, will place that city on even terms with New York, where previously the latter port was at a distinct disadvantage.

The Wells Fargo Express Company has raised the express rate between New York and Englewood from 40 to 50 cents per hundred pounds.

Canal boat owners on the Erie Canal have increased freight rates on corn and on all grain, with the exception of oats, $\frac{1}{2}$ of a cent a bushel, the new rate being $4\frac{1}{2}$ cents a bushel.

The New York Central Railroad Company and its general traffic manager were each found guilty on six counts of giving unlawful rebates in 1904 to the American Sugar Refining Company, by a jury in the United States Circuit Court. Judge Holt sentenced the rail-

road company to pay a fine of \$18,000 on each of the counts, a total of \$108,000, and Frederick L. Pomeroy \$1,000 on each count, a total of \$6,000. An appeal will probably be taken directly to the United States Supreme Court. One of the counsel for the railroad said: "There are many points in the Elkins law that have never been decided by the United States Supreme Court. One point is whether a corporation or its officers are guilty of an act charged, and another is whether on conviction in such cases both should be adjudged guilty under the same indictment if the alleged violation is solely by an officer and not by the corporation."

A committee consisting of Henry Joyce, chairman; Walter B. Pollock, William E. Cleary, L. W. Beasley, John Tracy, William Simmons and Robert M. King recently protested to Commissioner Bensel, of the Department of Docks, New York City, against an increase in wharfage rates. It is believed that the following schedule will soon be adopted:

Under 50 tons	\$0.50
50 tons and under 100 tons....	.62½
100 tons and under 150 tons....	.75
150 tons and under 200 tons....	.87½
200 tons and under 250 tons....	1.00
250 tons and under 300 tons....	1.12½
300 tons and under 350 tons....	1.25
350 tons and under 400 tons....	1.37½
400 tons and under 450 tons....	1.50
450 tons and under 500 tons....	1.62½
500 tons and under 550 tons....	1.75
550 tons and under 600 tons....	1.87½

For 600 tons and upward 12½ cents for 50 tons in excess of last rate. Canal boats, 50 cents loaded; 30 cents unloaded.

James Ackroyd & Son, of Albany, complain against the switching charges of the Delaware & Hudson and New York Central put in force July 2. The matter is in the hands of the State Railroad Commission.

The commission has taken testimony on the application of the Buffalo, Lake Erie & Niagara Terminal Railroad for a freight belt line around Buffalo along the border of Erie County. The New York Central is opposing the application of a grant of the certificate, of necessity. The Frontier Terminal Railroad Company, which is organized for a similar purpose, is also opposed, and the fight is between the two companies for the freight business, if either wins.

The special committee appointed by the New York Produce Exchange to take up with the railroads the discrimination against grain receivers at New York has so far met with no success.

Two demurrers have been filed in the United States Circuit Court by John E. Parsons in behalf of the American Sugar Refining Company, to the indictments returned against the corporation by the Federal Grand Jury, alleging violations of the Elkins Anti-Rebating act. In the demurrers it is sought to nullify the indictments on the ground that they lack sufficient particulars and also that the crimes alleged were committed before the passage and approval of the Elkins act.

NORTH CAROLINA

The Seaboard Air Line will spend about \$50,000 for the improvement of its freight facilities in Raleigh.

The Carolina Transportation Company, of Wilmington, has been granted a charter to operate freight and passenger service both on Cape Fear River and its tributaries. The capital stock

is \$20,000. J. W. Brooks and Edward Taylor are stockholders.

OHIO

The Standard Oil Company has been found guilty of conspiracy in restraint of trade prohibited by the Valentine Anti-Trust Law passed by the Legislature three years ago. It took the jury thirty-two hours to reach a verdict. A fine of \$5,000 was imposed. The Standard will make an appeal to the Common Pleas Court and possibly to the Circuit Court and the State Supreme Court. If the verdict is sustained by the higher courts, it will be necessary for the Standard to allow its auxiliary companies in Ohio to fight in the open as separate concerns. An effort will be made by Ohio officials to have the United States Government bring proceedings against the Standard, similar to those which dissolved the Northern Securities Company.

It is announced at the offices of the National Petroleum Association in Cleveland that the Central Freight Association has asked and has been given permission to reply to the charges of the association until November 15. The answer day was to have been October 5. The case is pending before the State Railway Commissioner of Indiana.

OKLAHOMA

A general investigation of alleged railroad abuses has been inaugurated by Governor Frank Frantz and his Attorney-General, Judge W. O. Cromwell, by the filing of suits in the district courts of both Garfield and Kingfisher counties. In the four suits filed in the district court of Garfield County, Judge Cromwell seeks to enjoin the roads from charging exorbitant freight rates and from other alleged violations of the laws. Two of these suits are against the Rock Island, and one each against the Frisco and the Santa Fé. The basis of these suits reverts back to the original grant by Congress in 1887, allowing the railroads to build lines into Oklahoma and Indian Territory before either was opened to settlement. The Santa Fé grant, Judge Cromwell holds, was really an extension of the Southern Kansas Railway and the Rock Island grant an extension of the Kansas & Nebraska line. In both these grants the extensions were limited in their charges to the rates allowed in the original charters of the roads. On the same day that the suits were filed in Garfield County, complaints were filed in the district court of Kingfisher County by George L. Bowman, as a result of the investigation by Judge Cromwell. The defendants named include the Waters-Pierce and Standard Oil companies, the Oklahoma Mill & Elevator Co., the Long-Bell Lumber Co., Arthur T. Haines, Atwood & Burnett, the Farmers' Mill & Elevator Co., the El Reno Coal & Fuel Co., and the following corporations, as dealers in grain: The El Reno Mill & Elevator Co., Arthur T. Haines, the Burris Mill & Elevator Co., and others in the city of Kingfisher engaged in the lumber, grain, coal and milling business. These defendants are all charged with operating in their various lines as members of a trust, combination or agreement for the purpose of regulating and fixing the price on the various commodities handled by them. In the suit filed in the district court

of Garfield County against the Frisco road, it is charged that in the towns of Mountain Park, Snyder, Siboney, Manitou, Frederick, Davidson, Vickers, Hedrick, High Tower, Altus, Olustee, Gypsum and Eldorado the defendant has agreed with other roads to charge a fixed rate for the transportation of wheat, corn and other crops for local distance haul, and not for the export trade. In the language of the complaint, "that at the stations above referred to the defendant, in violation of law and to the irremediable injury of the inhabitants and shippers thereof, and to the Territory of Oklahoma, has recently and is now demanding, in addition to the local rate, the sum of 9½ cents a 100 pounds on corn and 11½ cents a 100 pounds weight on wheat."

OREGON

Construction of the Eagle Valley is now assured. The new road will be used to haul ores and concentrates from Cornucopia to the smelter, and will transact a general freighting business between Cornucopia and Carson, practically doing away with the expensive hauling by wagons. It will handle all freight up the grade, including the supplies for the Searles and other mining properties there.

John E. Searles, of New York, is building and equipping a nine-mile electric line at his Cornucopia gold mines, to connect the Cornucopia mines of Oregon, as they are called. It will cover a section of mountain country, and will provide a means of hauling the output of the mine down an extremely heavy grade to Carson, the objective point of the Eagle Valley system.

Announcement is made through the freight department of the Oregon Railway & Navigation Company here that a uniform distance tariff is to be put into effect on all railroad lines, except the Southern Pacific, throughout Oregon, Washington, Idaho and Montana. The change is to be made in Washington in conforming to a decree which is soon to be issued by the Washington Railroad Commission, and the companies are carrying the change voluntarily into the other States in order to make the rates harmonize and to meet the demand for a reduction. The new distance tariff will apply between all points where there is not at present a special commodity rate lower than the proposed schedule. In many cases it will lower rates between interior towns as much as 20 per cent., but will not greatly affect the distributing rates out of Portland.

PENNSYLVANIA

The Pennsylvania Railroad Company and the Ericsson Line, which plies between Philadelphia and Baltimore, are engaged in a dispute over dock facilities at this port and shipments of freight to Baltimore.

Mayor Weaver, of Philadelphia, is to make a report to the City Councils on city wharves, their leases, the opportunities for using some public docks, and allied matters.

Two new freight steamships are to be included in the Hamburg-American line's service between Philadelphia and Hamburg.

The new freight station of the Pennsylvania Railroad at Harrisburg will be built of steel and iron. Plans have already been filed.

The Clyde Steamship Co. is about to institute two new services from Philadelphia. A daily express freight service is to be established between Philadelphia and New York by which goods will be delivered to consignees within twenty to twenty-four hours of time of sailing, and the freight service between Philadelphia and Norfolk is to be expanded from four times a week to daily. Two new steamships are now under construction by Harlan & Hollingsworth, of Wilmington, especially for the New York service. They will be twelve-knot boats, making the trip in eighteen and a half hours. A third ship is to be built next year for the service. One of the new vessels is under contract to be delivered January 1 and the second on February 1.

It is understood that the Wabash and Pennsylvania railroads have agreed to bury their differences, for the present at least. The former road is now proceeding with the construction of its big bridge above the Monongahela division tracks of the Pennsylvania Railroad at Clairton.

RHODE ISLAND

The Enterprise line, which now operates a steamship line between Fall River and New York, is making arrangements for the establishment of a line from Providence to New York, and it is expected that the service by the new line will begin by November 1. The service will be daily, and accommodations will be provided for both passenger and freight business. The Providence terminus of the line will be at the old Clyde line steamship docks, and accommodations have been arranged for in New York. The advent of the Enterprise line in Providence will make three direct water routes from there to New York, on two of which, the Joy and the Enterprise lines, the passenger service is continuous throughout the year. In the other case, the Providence line, passengers are not carried during the winter.

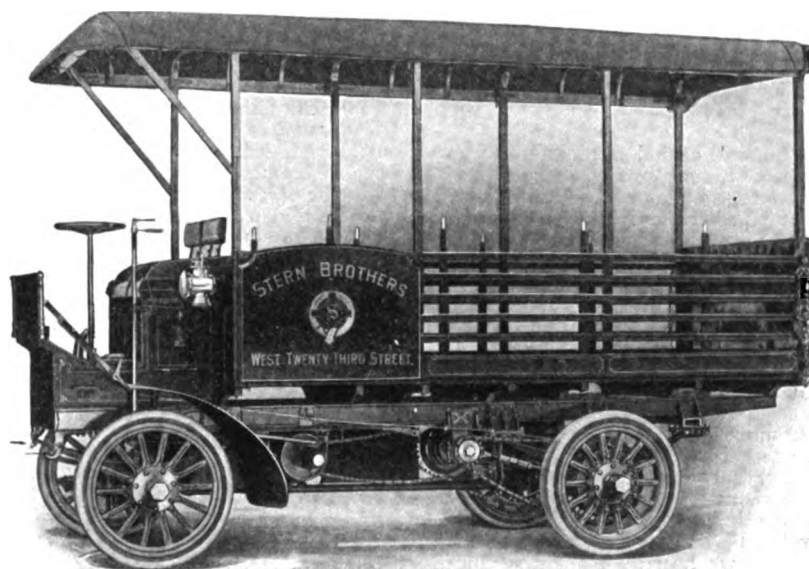
The proposition to build a dock on the west shore of Narragansett Bay near Saundertown is of exceptional interest to the people of southern Rhode Island. The trolley roads in Massachusetts are important feeders of the steamship companies in Fall River, and the probability is that the Sea View will contribute some business to the New York boats stopping at Saundertown.

TENNESSEE

The Grand Jury of the special term of United States Court, special session, returned a voluminous indictment recently against the Standard Oil Company before Judge John E. McCall, George Randolph, district attorney. The indictment was against the Standard Oil Company of Indiana, one of the companies of the Standard Oil group. It contains 1,524 counts, the maximum penalty applicable for each under the Interstate Commerce Act and its amendments is \$20,000 and the minimum \$1,000. Each count charges transportation of separate carloads of oil at a discriminatory rate in favor of the Standard, and each count constitutes a separate offense. The maximum total penalties possible under it would be \$30,480,000; minimum total, \$1,524,000. It covers illegal shipments for the past three years. The indictment weighs 18½ pounds and is about 5 inches thick, and contains about 500,000 words. Witnesses before the

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Grand Jury were: John J. Duck, assistant auditor of Chicago & Eastern Illinois Railroad; L. B. Butts, assistant auditor of Illinois Central Railroad; J. P. Seabrook, joint station agent Illinois Central and Southern railroads at Grand Junction, Tenn.; G. M. Crosland, from office of Interstate Commerce Commission, Washington, and T. C. M. Schindler, rate expert of Bureau of Corporations, Washington. This indictment is the outcome of an investigation made by James Rudolph Garfield, Commissioner of Corporations, into operations of the Standard Oil Company, especially transportation of petroleum, which investigations were presented to Congress in a report submitted last May, accompanied by a special message of the President.

The Merchants' Tariff Bureau of Nashville has been placed in charge of W. A. Cason, for several years with the rate department of the Illinois Central at New Orleans.

The new freight depot of the Southern and Illinois Central in Nashville has been completed.

TEXAS

San Antonio capital is to establish an automobile freight and passenger service between Cotulla on the International & Great Northern and Carrizo Springs. A 125 horse power machine will be utilized. It will be able to carry an immense load of freight, besides a number of passengers.

C. R. Kitchell, secretary of the Texas Committee of the Interstate Inland Waterway, has been furnished with several hundred pages of data concerning in-bound freight to Texas by the Railway Commission. Mr. Kitchell says: "There was some doubt as to whether the railroads could be made to furnish the data requested, but it is evident that they have heartily responded. In this connection I wish to say in behalf of the league that we heartily thank the commission and the railroads for the work that has been done in furnishing us this data, which will be of the greatest value in furthering the movement for the opening up of the canal. The railroads of Texas have taken a very liberal attitude in complying with a request that might be regarded as detrimental to their interests, and their broadness in the matter is most commendable."

Judge S. H. Cowan, who has been employed by the State to assist the Attorney General in the defense of the suits filed by the various railroads against the Railroad Commission of Texas, gave out what is probably the first official statement concerning the plans of the defense and the issues recognized as presenting themselves and likely to present themselves in the prosecution and defense of the suits. Heretofore the counsel for the State, including Judge Cowan, the Attorney General and his force of assistants, has maintained a rigid silence in regard to the matter.

When asked what is being done by the State in preparation for the hearing of the cases, also concerning the date on which the cases will likely come up, as to the questions raised by these cases and their effect, Judge Cowan said:

"I have been engaged for several days in an examination of the very voluminous printed petitions of the railroads wherein they attack the rates established by the commission, and I find that about everything that the imagination could conceive of has been set up as affording grounds upon which the railroads found

the claim that the schedule of rates on all classes of goods and all commodities and classification thereof for shipment within the State, and all of the orders, rules and regulations of the commission with respect thereto, violate the constitutional rights of property of the railroads under the Constitution of the United States, which prohibits the taking of private property without due process of law and secures equal protection of the laws.

"These allegations as a whole seek to make it appear that they are operating at a loss. This is all figured from the standpoint that the railroads are entitled to earn enough to pay the interest on whatever obligations they may have outstanding and make a profit in addition to that, as well as to provide a sinking fund for the payment of their obligations. They set up extreme expense incident to handling business in the State and in effect contend that it is done at a loss. The asserted value of the roads is generally upon the basis of two or three times what it costs to construct them. I have no doubt that witnesses will be produced with figures and statistics which will attempt to sustain these allegations, and all of that class of testimony will have to be met in detail, which will involve the ascertainment of the exact and true effect down to the minutest detail."

VIRGINIA

The Norfolk Board of Control has approved the petition of the retail merchants for a temporary permit allowing the Norfolk & Atlantic Terminal Company to haul freight through the streets of the city, and forwarded the petition to the Council and Board of Aldermen bearing their indorsement.

Charging discriminations in freight rates on coal against Norfolk consumers in favor of export shippers and transportation companies a damage suit for \$10,000 was filed by the Norfolk Cold Storage & Ice Company in the United States Court recently against the Norfolk & Western Railway Company.

The declaration alleges, first, that the rates charged by the defendant company are unreasonable; second, discrimination in rates between coal delivered at Lambert's Point and Norfolk in favor of Lambert's Point, and, third, discrimination between transportation companies in Norfolk and local consumers in favor of the transportation companies.

Norfolk is protesting strenuously against the section of the new rate law which compels railroads to give thirty days' notice of any change in export rates.

WASHINGTON

By the sinking of the steamboat Pringle in the rapids of the Columbia a mile and a half above the town of Orondo on the morning of October 9, shipping on the upper river will be seriously handicapped this fall and winter. The boat had a carrying capacity of over 6,000 sacks of wheat, and when she went down had a cargo fully equal to her capacity, considering the stage of water.

The probabilities are that she will lay in her present position among the rocks till she is beaten to pieces by the ice coming down the river this winter and next spring.

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HEARINGS AND RULINGS BEFORE STATE COMMISSIONS

ALABAMA

The report of the Alabama Railroad Commission for the year ending June 30 was filed October 8 by President B. B. Comer. The most important matter considered by the commission during that year, the report states, was that of a general revision of freight rates upon all lines operating in the State. Reference is made to the fact that two opinions were rendered by the commission regarding this subject, one being signed by the associate members and the other by the president of the body.

Examination of various tariffs, the report further states, showed that there were some inequalities, inaccuracies and discriminations in existence in the rates applying to the State. The railroad companies had been ordered to submit revised tariffs for approval, with the result that in such revised tariffs all the changes approved were reductions.

FLORIDA

The joint meeting of lumbermen and forwarders with the railroad officials before the State Railroad Commission at Tallahassee resulted in reaching a common ground after there had been a general discussion.

A large delegation of the lumbermen of Jacksonville and other Florida points were present before the Commission and presented the lumbermen's side of the case. The railroads were also well represented, and facts of more than usual interest were brought out before the hearing ended.

The hearing came up on the rule of the Railroad Commission requiring the railroads to show cause, if any they had, why the proposed wharfage rates laid down by the commission as a solution to the problem arising from the contemplated charges the railroads were about to put in effect should not be enforced.

In brief, the agreement reached at the hearing before the Railroad Commission was in effect a re-establishment of the old rates, as follows:

Crossties—Wharfage, including not exceeding sixty days' storage (handling at owners' expense) per tie, one cent.

Storage, each additional thirty days or fractional part thereof following the first sixty days, per tie, half cent.

Lumber—Wharfage, including storage for not exceeding sixty days (handling at owner's expense), per thousand feet board measure, twenty-five cents.

Storage, each additional thirty days or fractional part thereof following the first sixty days, per thousand feet board measure, twenty-five cents.

When the announcement was made that an agreement had been reached between the lumbermen and the railroad men, a request was made that the Railroad Commission withdraw its notice of a hearing on the rates proposed by the commission. This was done and the matter was ended.

This agreement was reached at a conference between the railroad officials and the lumbermen previous to the meeting before the Railroad Commission, whither both parties to the controversy had gone in order to settle their claims. The result is a complete victory for the lumber interests, and it promises to provide for better facilities in the future.

It will be remembered in this connection that at the special meet-

ing of the board of trade committee, a resolution was passed requesting the Railroad Commission, if that body believed it had that power, to compel the building of more wharves and terminals here. The opinion was general that the Commission did have that power, and the lumbermen who attended the meeting favored the resolution and promised to do what they could toward securing action thereon from the Commission.

Thus far the matter has been held in abeyance. If the better terminal facilities are furnished, as promised, and the lumbermen get "wharfage and not sand," no action will be taken, but if the promises are not redeemed, then it is understood that a thorough test will be made of this proposition and an effort made to put in force the \$5 demurrage plan, as outlined above.

GEORGIA

After a lengthy hearing the Railroad Commission has decided to assume authority on the switching and transfer of cars at points of destination on all intrastate business—that is, business originating within the State of Georgia. All roads in the State will be penalized for a failure to promptly switch and transfer freight at points of destination, in the event the shipment originated within Georgia.

The Commission Thursday afternoon decided to fix a penalty of \$1 per day per car for failure to perform the switching service promptly. The same penalty is imposed upon consignees for failure to unload freight promptly. A uniform rate of \$2 per car will be allowed for switching charges.

The Commission did not touch upon the switching of interstate shipments.

It was also decided by the Commission to apply rule 1—the continuous mileage rate—to all shipments handled by the Central of Georgia and the Wadley & Southern, formerly the Wadley & Mt. Vernon, and the Stillmore Air Line. This decision is a recognition on part of the Commission of the ownership of the Wadley line by the Central.

Heretofore the Wadley and Stillmore lines have collected a local rate on all through shipments handled in connection with the Central. The decision of the Commission means a reduction of rates on the two short roads of from 5 to 25 per cent.

The Commission, in circular No. 324, effective October 30, makes the following rulings:

The Atlanta Northern Railway is hereby placed in Freight Class A of the Classified List of Railroads of the Railroad Commission of Georgia and is al-

lowed to charge for the transportation of freight no more than the rates provided by said class. It is hereby further ordered that any rates in effect over said railway which are lower than said Class A are to continue in effect unless otherwise ordered by this Commission.

The Milltown Air Line Railroad is hereby placed in Freight Class D of the Commissioners' Classified List of Railroads and Passenger Class A, 3 cents per mile, and is allowed to charge for the transportation of passengers and freight no more than the rates prescribed by said classes.

Storage Rule No. 10 is hereby amended by substituting the following for the fourth paragraph of said rule: "Provided, however, that at divisional terminals, or at other points where re-handling of a shipment or transferring same from one car to another, is necessary in reaching its destination, twenty-four hours shall be allowed at each point where such re-handling or transfer is necessary."

The following changes in and additions to the Commissioners' Classification of Freight are hereby made:

Belting, stitched canvas	4	..
Machinery, viz:		
Boilers, steam, 30 feet and over, including necessary stack, L. C. L.	1	..
Boilers, under 30 feet, including necessary stack, L. C. L., see Rule 14.	3	..
Baskets, wood splint, with tops or handles, nested, or in bundles of four, with ends placed in each other, L. C. L.	1	..
Wool, unwashed, pressed in bags, or bales not to exceed in size 2½ ft.x3½ ft.x6 ft., nor weighing less than 200 lbs.	6	..

The injunction suits brought by the Central of Georgia, the Atlantic Coast Line and the Southern Railway before Judge Newman, in the United States Court, against the State Railroad Commission to prevent the enforcement of circulars 3136, 317 and 318, have been assigned for hearing on Monday, October 29. These circulars ordered reductions in the local rates of freight charges on these systems. Since 1893 they have been allowed to charge about 25 per cent. in addition to the standard tariff on local hauls, and the Commission, after an investigation, cut this percentage down to 15. The railroads then enjoined the enforcement of the Commission's orders in the United States Court.

The Commission passed favorably upon the petition of the City Ice Company of Augusta, to the extent that it will in future be given sixty hours free time for unloading a car of coal instead of forty-eight hours, as has heretofore been the rule. The company claimed the size of the cars had materially increased and that it now takes longer to unload them than it did some years ago, when the forty-eight hour rule was made. The action of the Commission in increasing the time from forty-eight to sixty hours was somewhat in the nature of a compromise between the position taken by the ice company and the Central of Georgia Railway Company, which was the defendant in the complaint.

The Commission also granted the petition of the people of Griffin for re-

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duced freight rates between that city and Savannah. The Commission decided to make rates between Griffin and Savannah upon the same basis as the rates between Atlanta and Savannah and in both directions. This involves a reduction of 4 to 5 per cent. in the freight rates between Griffin and that point.

KENTUCKY

Judge Cochran, of the United States Court, has handed down a decision granting a temporary restraining order against the State Railroad Commission prohibiting the enforcing of the order for a 20 per cent. reduction on all freight rates in the State until a final hearing of the complaint filed by the railroad attorneys.

The order requires all railroad companies after October 1 to furnish a waybill showing the date, point of origin, destination, name of consignee and consignor, character of freight, weight and total charge, and requires all waybills to be kept in the general office until the final determination of the case in order to show what amount, if any, was charged to each shipper in excess of a lawful rate.

The order requires all interstate and State rates to be kept separate.

LOUISIANA

The commission on October 10 handed down twenty-one decisions, in which there were three fines of \$100 each against the St. Louis, Iron Mountain & Southern, the Texas & Pacific and the New Orleans & Northwestern.

In addition to this some very important cases were decided by the commission, among them being an order to require the railroads of Louisiana to have trucks and tarpaulins at every agency station for the handling of baggage, an order requiring the express companies to file a tariff sheet within ninety days, and an order directing that the Cumberland Telephone Company put into effect within ten days the reduced rate on the toll line service as set forth by the commission in its previous orders.

The following is the order of the commission cutting down the charge for transferring of lumber in transit:

"After a full investigation and hearing of all interests, the commission believes that a reasonable charge for transferring overloaded shipments of lumber, in transit, should be established, and believing that a maximum charge of \$2.50 per car is a reasonable charge for transferring shipments of dressed lumber, it is

"Ordered, That whenever it is necessary for a railroad company operating in this State to transfer a shipment of lumber in transit on account of overweight in the car the railroad company shall charge no more than the actual cost of performing such service, except that on shipments of dressed lumber the maximum charge to be made is hereby fixed at \$2.50 per car.

"All orders, rules and regulations in conflict herewith are canceled."

The following is the important order of the commission in regard to the notices that must be placed in depots:

"After notice to and hearing of interested parties, it is

"Ordered, That railroad companies operating in Louisiana shall hereafter be required to have printed in large type and kept posted in a conspicuous place in each waiting room at depots in Louisiana the following notice:

"All rules and regulations of the Railroad Commission of Louisiana are on file with the agent at this office. All tariffs of this company, authorized by the commission, applying on local or joint through shipments are on file in this office for the inspection of the public.

"All agents are required under the commission's rules to bulletin trains when late; to furnish drinking water to passengers; to keep waiting rooms clean and well lighted, and to have them heated when necessary.

"The Railroad Commission of Louisiana would appreciate the prompt reporting to its office at Baton Rouge, La., the failure of any agent to comply with these requirements.

"At places where passenger and freight depots are separate, the notice relative to tariffs may be omitted in passenger depots, and the notice relative to posting bulletin boards when trains are late may be omitted in freight depots.

"All orders, rules or regulations in conflict herewith are canceled."

The following is an order of the commission directed to the American, Pacific, Southern and Wells-Fargo express companies doing business in Louisiana.

"Ordered, That all express companies operating in the State of Louisiana shall revise and publish their tariffs, applying on both local and joint through shipments within the State of Louisiana in uniform tariff sheets, showing the rates applying between all express offices in the State of Louisiana, where such companies handle express business, and shall file the same in the office of the commission at Baton Rouge, La., within ninety days from the date of this order."

The commission adjourned from October 12 to November 7.

MINNESOTA

The Omaha road filed a new tariff with the State Railroad and Warehouse Commission on coal rates from Duluth, Ashland, Washburn, Itasca and Superior to points in this State, the changes being cuts to meet those of the Great Northern at competing points in the southwestern part of the State. The large decreases are all at competitive points, and the other changes are such as are necessary to adjust the rates along the line at neighboring points. Points where material changes in the rate are made have coal rates altered by the new tariff, compared with the old, as follows:

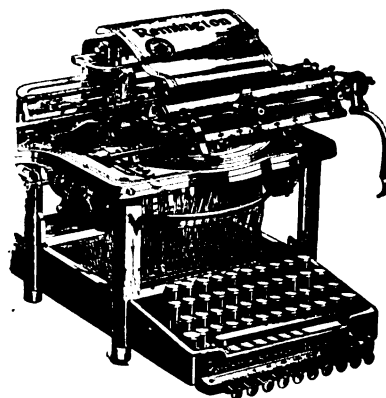
Station.	Hard Old.	Coal. New.	Soft Old.	Coal. New.
Burr	\$2.50	\$2.45	\$2.65	\$2.20
Marshall	2.25	2.10	2.25	1.85
Hendricks	2.75	2.45	2.65	2.20
Verdi	2.75	2.45	2.65	2.20
Sanborn	2.25	2.10	2.15	1.85
Redwood Falls.	2.25	2.05	2.11	1.80
New Ulm	2.25	2.05	1.80	1.80
Darfur	2.25	2.10	2.00	1.85
Wabasso	2.25	2.10	2.25	1.85
Springfield	2.25	2.10	2.15	1.85

Minnesota railroads have decided finally to change front and accept the reduction in merchandise rates ordered by the State Railroad Commission. Notice to this effect has been given to the commission, and time has therefore been granted to the roads to make their interstate rates conform to the schedule. The commission believes that this is the most important work it has ever done.

The attorney for the Minnesota Shippers' Association recently before the

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State Railroad and Warehouse Commission made charges that the Chicago, St. Paul, Minneapolis & Omaha Railroad had given rebates aggregating \$90,000 to roller mills at New Richmond, Wis. Vice President Clark, of the railroad, denied it, but said that on wheat shipments east of Chicago a receipt is furnished the companies upon which they can secure refunds in varying amounts.

Subpenas were served by the United States Marshal on the controllers, treasurers and heads of the claim departments of the Great Northern, the Chicago, St. Paul, Minneapolis & Omaha, the Minneapolis & St. Louis, and the Wisconsin railroads, directing them to appear before a special grand jury in the United States District Court in Minneapolis with the books and records of their respective departments. This action is said to have been taken as a result of the investigation by an agent of the Department of Justice of the Federal Government of the giving of rebates by the railroads of the Northwest in connection with shipments of freight.

MISSISSIPPI

A general revision of local freight rates is being considered by the Railroad Commission. Just now the subject of classification is uppermost.

The merchants of Columbus have formally petitioned the commission to be placed on the same local freight rate basis as has been granted to Jackson and Meridian.

Hattiesburg will probably soon receive some freight rate concessions from the lines having connections at that point. Hattiesburg and Laurel are endeavoring before the commission to obtain the same footing in the jobbing and wholesale trade as Jackson and Meridian.

OHIO

The Railroad Commission began its work on September 7 by issuing the following rules governing the filing of tariffs by railroads operating in Ohio:

The Railroad Commission of Ohio has given consideration to the question of tariff publishing and filing by the carriers of Ohio, and has come to the conclusion that it were best not to require the filing of tariffs immediately, but that it were only fair to give the carriers a reasonable length of time for preparation. The commission realizes that just now the railroads are uncertain as to what the Interstate Commerce Commission will require under the new Federal law and that considerable time and a vast amount of work will be necessary to prepare tariffs under the regulations that may be prescribed by that body. The commission, in consideration of these conditions, has decided to allow the railroads and express companies operating in Ohio until January 1, 1907, to get ready. It is therefore ordered:

That the railroad and express companies of Ohio file with the Railroad Commission of Ohio between December 22 and December 28, 1906, one copy each of all tariffs, classifications, rules and regulations, State or interstate, affecting charges for freight, passenger and express transportation, that will be in effect January 1, 1907:

That all subsequent issues be filed with the Railroad Commission of Ohio not less than ten days prior to the date on which they become effective.

The above order refers to all tariffs

issued bearing rates from points in Ohio, whether intrastate or interstate.

Each tariff shall bear a number with the letters "R. C. O." prefixed; a separate series of consecutive numbers to be used for freight, passenger and express tariffs. This number is to be printed in the center of the top margin of the title page of each tariff.

The initial railroad or express company shall be the filing company; that is to say, each railroad or express company shall file tariffs covering rates from points on its line. All tariffs printed after December 22 shall have the R. C. O. number printed thereon; other tariffs shall have the number stamped thereon. The purpose of the R. C. O. numbers is to enable the Commission to check tariffs received, to ascertain if there be any omissions, and to identify supplements.

Each supplement shall indicate the supplement number and the R. C. O. number to which it applies. There shall be but one supplement to any one tariff, in force at one time; that is to say, each supplement shall cancel and include all previous supplements.

It will not be necessary for every road in Ohio to file freight classifications with the commission; but each tariff must plainly state the governing classification and each road must file with the commission the exceptions to classifications in effect on that road. Express companies may file classifications with tariffs or separately as they may elect, provided that in case of separate filing each tariff show plainly thereon reference to the classification.

It will not be necessary for each railroad to file fast freight line guide books; but each railroad will advise each fast freight line manager to supply the commission with two copies of the fast freight line guide book, and two copies of all supplements as they are issued. Each railroad shall file with the Railroad Commission of Ohio tariffs showing the basing rates from group points on its road to all fast freight line basing points.

The commission will in each case hold the filing road responsible for the concurrence of connecting lines so far as intrastate rates are concerned. In other words, the filing of a tariff shall make it valid. No line shall file a tariff naming rates to points in Ohio until the concurrence of all interested connecting lines has been secured.

Freight tariffs must show minimum charges, minimum weights (on carloads), prepaid stations, reference to car service rules, terminal and other schedules of charges or regulations that are filed separately.

Passenger tariffs must show stopovers allowed and other matters affecting the value of the ticket.

Express tariffs must either bear the rules and regulations affecting the classification of express freight or show plainly a reference to them filed separately.

Other than the above the commission will not, at this time, prescribe detail rules as to form of tariffs or as to what they shall bear; but it is desired that the rules and regulations prescribed by the Interstate Commerce Commission for interstate tariffs be applied to Ohio tariffs.

As to the keeping of tariffs on file in depots and offices for the inspection and information of the public, the railroads of Ohio will conform to the rules pre-

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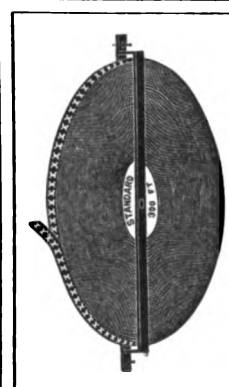
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scribed by the Interstate Commerce Commission.

In the matter of posting advance notices of changes in rates, the railroads of Ohio will be governed by the rules of the Interstate Commerce Commission.

Each railroad and express company will furnish its own form of advice when sending in tariffs for filing.

In further explanation of the above order will say that the commission could not accept the O. C. T. A. tariff as at present published. Each railroad must file under its own R. C. O. number tariffs covering rates from points on its line to points on connecting lines, whether such tariffs carry class or commodity rates. And supplements must be issued so that each supplement will be complete in itself, cancelling all previous supplements.

RAILROAD COMMISSION OF OHIO,
By H. D. Mannington, Secretary.
COLUMBUS, Ohio, September 7, 1906.

Then followed Supplement No. 1 to Bulletin No. 1, reading as follows: "In the matter of the amendments to Rules Governing the Filing of Tariffs, issued by this commission, dated September 7, 1906, the following rule in addition thereto was adopted: Any railroad of Ohio desiring to concede to shippers and receivers the privilege of stopping en route carload freight for the purpose of partly loading or partly unloading, such railway company must plainly indicate on each tariff the conditions of such rule."

Further consideration of the ruling concerning the filing of tariffs resulted in the issuance of the following order:

"Owing to the fact that the Interstate Commerce Commission has not promulgated its rules affecting the filing of tariffs, and since it is probable that that Commission will require each road to file its individual tariffs, the Ohio coal originating roads have asked the Railroad Commission of Ohio to extend the time within which they may prepare and file their coal tariffs. The Ohio commission fixed the date in its original rules, promulgated on September 7, for January 1, 1907. Heretofore the coal tariffs for Ohio of these roads have been published under authority of the Ohio Coal Traffic Association. The changes worked by the new laws, both State and national, will probably require that each road shall file its own tariff on coal as in other cases, and the delay of the Interstate Commerce Commission in promulgating its rules will make it impossible, according to the coal roads, to prepare their tariffs for filing by January 1. In view of these facts the Railroad Commission of Ohio has amended its rules in that respect by extending the time within which the coal roads may file their coal tariffs by fixing such a date sixty days from the promulgation by the Interstate Commerce Commission of its rules in respect thereto, said extension of time not to go beyond February 1, 1907."

When the commission called the case of the Campbell's Creek Coal Company against the B. & O. S. W. Railway, counsel for both parties stated that there was a possibility of an agreement being reached, and asked the commission for further time. The commission granted the request, and later both parties joined in an announcement to the commission that they had agreed on a postponement of the hearing for thirty days, with the view to negotiating a settlement. At the

expiration of thirty days, in the event they have been unable to agree, the commission will be requested to take the matter up again and set a later date for hearing.

Charles Darlington, of Xenia, attorney for sundry parties, has filed complaint with the commission against the Dayton & Xenia Transit Company on account of the defective condition and inadequate service of the Rapid Transit division of said company between the cities of Dayton and Xenia.

The commission is in receipt of a complaint from the Zanesville Chamber of Commerce regarding the lack of passenger service on the Zanesville & Western (operated jointly with the Hocking Valley) between Cannelsville and that point and San Toy and that point. It is claimed that no passenger service whatever is maintained between the two points and Zanesville, but that the railroad is used only for freight traffic, principally coal.

The commission announces its calendar for the next month as follows: Friday, October 26, conference with wholesale and retail coal dealers; Monday, October 29, inspection of alleged dangerous street crossings at Dayton; Tuesday, October 30, hearing in the matter of the application to vacate order in H. V. Ry. case; Wednesday, October 31, hearing in the complaint of the villages of San Toy and Cannelsville v. the B. & O. R. R. and Z. & W. Ry. Co.; Thursday, November 1, hearing in the complaint of Charles U. Shryock v. B. & O. R. R. Co.; Tuesday, November 13, hearing of complaint of George F. Ferguson et al. v. the Dayton & Xenia Traction Co.; Wednesday, November 14, hearing of complaint of Ohio Shippers' Association v. Ann Arbor R. R. Co. et al.

TEXAS

As a result of the cotton blockades over the State, it is expected that the Railroad Commission will be appealed to in some way or other. The last time the blockade amounted to much it was necessary for the commission to issue orders permitting cotton to be shipped by the first compress en route to destination and have it compressed at the first available press. It is barely possible that the interior compresses may not be able to begin to handle expeditiously the cotton rightfully belonging to them under the commission's regulations, and if such is proven to be the case, the commission will suspend the rules as to these compresses. The compresses in Galveston and Houston will be able to handle cotton the interior compresses cannot press, provided the railroads can furnish sufficient cars to take it to Galveston and Houston.

VIRGINIA

The State Corporation Commission recently took up for a second time the hearing of the assessment cases involving the steam railways of Virginia. The transportation companies object most strenuously to having their property assessed at the rate of \$20,000 a mile for single track and \$25,000 a mile for double track. They allege that they had some sort of understanding with the members of the Constitutional Convention whereby the trackage was to be assessed at only \$15,000 a mile for ten years.

The commission recently took up the matter of requiring railroad companies to obtain the consent of the commission

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before changing any schedule or withdrawing facilities established for the convenience of the public. The majority of the roads cited to appear have already submitted oral testimony, and all have filed written answers in the nature of objections. As soon as this case is disposed of the commission will resume the hearing of the uniform freight rate matter, which has been in progress with brief intervals for many months.

WASHINGTON

Copies of the new maximum distance tariff imposed by the State Railway Commission have been issued by the several roads operating in the State, and have been received at the local offices of the companies. The new rates became effective October 20 and grant distributing rates to all towns within the State, thus removing the protection which the jobbers of the large cities have heretofore enjoyed. An important amendment is made in the new tariff regarding the minimum charge on all shipments. Heretofore the minimum charge on single shipments has been the charge for 100 pounds at the class rate to which the commodity belonged, and in case the shipment was composed of more than one class of freight the minimum has been the charge for 100 pounds for the article taking the highest rate. The amendment provides that in no case will the minimum charge be less than 25 cents nor more than the charge for 100 pounds at the second class rate, unless actual weight at actual rate makes more. This new tariff will be extended November 15 to apply to all Idaho and Oregon, as well as to Washington, and practically removes the protective rates that Spokane has enjoyed.

The commission has been judicially sustained in ordering a joint rate on wheat to Puget Sound points. Its constitutional authority, which was questioned by the plaintiff, the Oregon Navigation, has been upheld. The court was unable to find that any showing of arbitrary classification had been made. It was held in the decision that the Legislature of the State has power to fix a maximum freight rate for common carriers operating within the State of Washington. It may also create a railroad commission. The power to fix maximum rates is no limitation of the power of the Legislature to create a railroad commission with rate making power. A railroad commission can make joint rates on commodities offered for transportation within the State of Washington.

WISCONSIN

In response to a letter of inquiry, the Wisconsin State Railroad Commission has received an opinion from the Attorney General in which that official holds that all street railways extending beyond the limits of a city or village are under the jurisdiction of the commission. This interpretation of the law is of wide importance, as it will, if sustained by the courts, give the Rate Commission power to regulate rates and service on all inter-urban railways in the State.

The commission, in the case of W. H. Campbell, of Oshkosh, against the Omaha Railway, ruled that the railroad has no right to charge the regular lumber rate on trimmings of pine lumber for the manufacture of boxes.

In the case of the Osceola Mill and Elevator Company against the Minneapolis, St. Paul & Sault Ste. Marie Railroad, the commission ordered the railroad to construct and maintain not less than 600 feet more of side track at

Osceola. They also ordered that a suitable road be built across the track for the accommodation of teams and another road along the outside of this side track of suitable height to allow freight to be loaded and unloaded.

The commission had a difficult matter before it recently in the subject of mixed carload lots. Complainants against various roads demand the privilege of shipping cars of mixed freight at car lot rates. The companies resist such an order on the ground that their rates for less than car lots are adjusted so that the expense of handling such freight is equitably distributed, and if the proposed order is made it will result in taking away a revenue from a large part of less than car freight, and therefore relatively increase the cost of handling the remainder.

The case of the Wolf River Paper & Fiber Company against the Northwestern road, being a complaint against the rates on coal from lake ports to Shawano, was adjusted between the parties, and was therefore not heard.

CANADA

Following is a copy of an order rendered by the Board of Railway Commissioners for Canada, purporting to correct an alleged freight discrimination in favor of shipments from the United States to British Columbia:

"In the matter of the complaint of the boards of trade of Vancouver and New Westminster, British Columbia, and the Canadian Manufacturers' Association, that the Canadian Pacific Railway Company unjustly discriminates against the coast points of British Columbia in exacting higher rates and more onerous conditions with respect to freight traffic which originates in Eastern Canada than with respect to similar traffic which originates in the United States, and which is carried by United States railway companies or by United States and Canadian railway companies jointly, to the same destinations in British Columbia, the board doth order:

"First—That with respect to the additional toll of 5 cents per 100 pounds charged to certain British Columbia points on all classes of freight traffic which originates in the Eastern States of the American Union, which is now added and charged also on freight originating in Eastern Canada and destined to the same British Columbia points, the companies shall henceforward and until further ordered by the board cease and desist from charging the said additional toll on the said freight traffic which originates in Eastern Canada.

"Second—That, for the minimum carload weights as now charged for certain descriptions of freight for which shippers may require cars longer than the standard car of 36½ feet in length, the company shall substitute the minimum weights prescribed in the Canadian freight classification, as provided by the board.

"Third—That the same allowance shall be made for the weight of lumber or other material used for the purpose of bracing, blocking, racking or otherwise safeguarding carload shipments of freight requiring such protection to points in British Columbia as are similarly made to other points in the Dominion of Canada."

At a meeting of the railway and transportation committee of the Canadian Manufacturers' Association at Toronto, the question of bills of lading was discussed at length. For some time the association has been endeavoring to get

what is called a clean bill of lading, which means that transportation companies accepting goods for transport are not relieved by contract of all responsibility in regard to the goods while they are in transit. Now a shipper signs a contract which specifies that the railways are not liable for damages to the goods through various causes. The committee decided to continue an agitation for the change.

PERSONAL MENTION

BANFORD.—W. B. Banford has taken the position of district freight agent of the Canadian Pacific at London, Ont.

BECKER.—O. H. Becker has been appointed contracting freight agent of the Canadian Pacific at Tacoma.

BUSHNELL.—W. M. Bushnell succeeds S. F. Stohr as assistant general freight agent of the Alton at Chicago.

GASTON.—H. G. Gaston has returned to Buffalo as local agent of the Lackawanna.

KEALHOFFER.—H. S. Kealhofer has been appointed manager of the Montgomery (Ala.) Freight Bureau.

NASSA.—A. L. Nassa has been appointed traveling freight agent of the Illinois Central at St. Louis.

STERLING.—F. W. Sterling has been made contracting freight agent of the Canadian Pacific at Seattle.

WHITE.—H. T. White has assumed his duties as freight claim agent of the New Orleans & Northeastern, the Alabama & Vicksburg and the Vicksburg, Shreveport & Pacific at New Orleans.

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Wholesale Dry Goods

Demand for American Goods in Foreign Markets

(These reports are collected from a number of sources, all of which are believed to be thoroughly reliable.)

There is believed to be a possible new market for American cheese in Spain, opened under the terms of the new commercial treaty with that country. The principal consumption in Spain consists of the common, round Dutch cheeses. If a fairly good quality of American creamery cheese could be delivered in Spain in fresh condition, and can be sold cheaper than Holland and Swiss cheese, there is every reason to believe that a good market could be developed.

The motor trade of India is recommended to the consideration of manufacturers in the United States. There will be an exhibition in Calcutta in January next. There are many excellent roads in India, some of them hundreds of miles in length, and that may be the reason India is rapidly taking a leading place in the exploitation of the motor industry in foreign fields. It is worth the careful attention and thorough investigation of American manufacturers who are seeking to enlarge their markets. The present time is an unusually good one for them to find out what the peculiar and special needs of the country are and what their competitors are doing to capture and hold the increasingly valuable trade. Reliability trials are to be held at Mysore, in Southern India, during the Christmas holidays. These will be followed by a general motor exhibition at Calcutta from January 21 to January 30, at which all the leading European manufacturers will be represented.

The value of the trade is seen from the official statement that the motor cars, motor cycles and cycles imported during the last fiscal year amounted to approximately \$2,000,000, of which one-half was through the port of Bombay, the supply mart of Western India. Accessories, which are classified under different headings, add to this total, while fuel and lubricating oils have had largely increased sales since the use of motor cars has become popularized.

American machinery builders are recommended to look into the requirements of Australian miners. By satisfying these requirements an excellent market may be opened.

A demand for cotton duck has been created in Africa by an act of Parliament compelling fruit growers to clean their trees from scale insects. The cy-

anide gas remedy is recommended by the government entomologist. This necessitates a covering for the tree in order to fumigate it successfully.

Representative E. J. Hill, of Connecticut, who assisted the Commissioner of Internal Revenue to formulate the rules under which the free alcohol law went into effect on October 1, spent most of the summer in Europe with Commissioner Yerkes in investigations on this subject. Mr. Hill states that Germany was the country in which the most progress was found to have been made in the direction of applying denatured alcohol for the development of industrial purposes. There are 70,000 farm distilleries in Germany, many of them being very small, and Mr. Hill was asked how the German Government could afford to furnish an inspector to each one of those distilleries. He replied:

"There is no difficulty in that respect. The stills have to be made in a certain way, which includes a tank that can be locked with a Government lock and sealed with a Government seal. The small farm distilleries do not operate all the year round. They operate in the winter, when the farmer has leisure to do something other than straight farm work. The farmer has to give the Government thirty days' notice as to the time he wants to begin to operate his still. Some time during the thirty days an inspector comes along and looks the still over to see that it is clean, etc., and then he locks and seals the tank, after which the still is ready for the farmer."

"He may go ahead and distill until the tank is full. Then he informs the person who is to buy the alcohol from him, after which he notifies the Government, and an inspector comes and removes the seal, measures the contents of the tank, and collects the revenue. If the farmer wants to denature the alcohol on the spot he can do so in the presence of an inspector, when the amount of the tax will be returned to him. But generally the farmers sell through the great central selling agencies, which denature at a central point and in large quantities, and collect the rebate from the Government in considerable sums. Thus the Government agents are not required to spend any appreciable time at any one farm, and one inspector can cover a large territory. Meanwhile the central selling agency pays the farmer on the basis of beverage alcohol and rebates for all that is denatured. It is a good system and is not very expensive to the Government."

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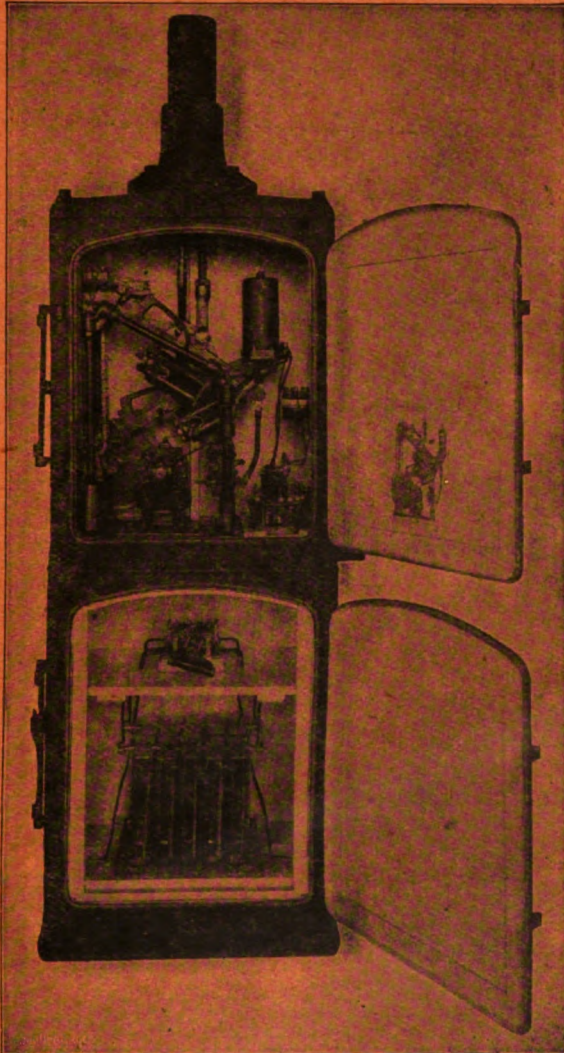
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THE SHIPPERS' FORUM



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Relation of Intra and Inter-state Freight Rates

BY JOHN B. DAISH

IN all the statements and testimony made by the committees of Congress during the past few years, in all the addresses made upon the subject of railway rates during the same period, in all the books and pamphlets committed to print recently, comparatively little time and space have been devoted to the reasonableness of rates. The great objection to the present situation has been the discrimination resulting from the relation of rates. A locality has complained that upon one or more commodities another locality has been given more advantageous rates to or from a common purchasing or selling center. A dealer in a particular commodity has objected that similar commodities have been accorded more advantageous schedules. A State has objected that its citizens are compelled to pay greater rates than an adjacent State. Those who have stated that any rate is reasonable per se are so few that the mention of them is not worth the while. Those who have made any vigorous attack upon the schedules as a whole were not, until after the passage of the rate law, numerous. Since the passage of the law, however, a considerable number of people, relying upon the fact that rates have been abolished, argue that all rates should be reduced to the extent of the rebates, and are seeking a horizontal reduction of rates on all interstate traffic.

Looking to a Reduction

There is a movement of greater or less strength in various States which looks to the reduction of charges upon the ground that such schedules as to every commodity contained therein are unreasonably high. The attack is not against the rates charged for any one of the particular classes of commodities nor for any particular distance, but applies to the entire schedules covering all classes and all distances. The burden of proving that existing intrastate rates are unreasonable naturally rests upon the party alleging such fact. Curiously enough, and yet entirely in accord with the characteristics and necessities of human nature, the first, and, at the same time, the most potential, reason alleged, is that the intrastate rates are much more than the interstate rates upon the same commodity and for

the same distance. Some people neglect to state, by way of proof, that they refer to the same commodity and the same distance. One will ascertain an intrastate rate on first class commodities for, say, 300 miles, and then find that the interstate rate upon the same commodity at the same price will carry the commodity 900 miles or more. Good reasoning is ordinarily considered proof. Surely it is entitled to some weight in a business sense. In a legal sense, however, it is improper to make a comparison between the intrastate rate charged upon traffic in a State, for instance, Nebraska, and the interstate rates for the same State; it is also improper to compare the intrastate rates of one State with the intrastate rates of another.

Comparisons of Little Value

In the matter of comparing the intrastate rates of one State with the intrastate rates of another, the Supreme Court of the United States in the case of *Smyth v. Ames*, approving what was said by the court below, indorsed the following:

It is, however, urged by the defendants that, in the general tariffs of these companies, there is an inequality; that the rates in Nebraska are higher than those in adjoining States; and that the reduction by House Roll simply establishes an equality between Nebraska and the other States through which the roads run. The question is asked, Are not the people of Nebraska entitled to as cheap rates as the people of Iowa? Of course, relatively they are. That is, the roads may not discriminate against the people of any one State. * * * (But they are not necessarily bound to give absolutely the same rates to the people of all the States), for the kind and amount of business, and the cost thereof, are factors which determine largely the question of rates, and these vary in the several States. The volume of business in one State may be greater per mile, while the cost of construction and maintenance is less. Hence, to enforce the same rates in both States might result in one great injustice, while in the other it would only be reasonable and fair. Comparisons, therefore, between the rates of two States are of little value, unless all the elements that enter into the problem are presented. It may be true, as testified by some of the witnesses, that the existing local rates in the State of Nebraska are 40 per cent. higher than similar rates in the State of Iowa. But it is also true that the mileage earnings in Iowa are greater than in Nebraska. In Iowa there are 230 people to each mile of railroad, while in Nebraska there

are but 190; and, as a general rule, the more people there are the more business there is. Hence, a mere difference between the rates in two States is of comparatively little significance.

Elements to Be Considered

And it was further alleged in the case to which reference has just been made that the reasonableness of rates established by the Nebraska law ought not to be determined by the inquiry whether such rates should receive a reasonable net profit from the local business affected thereby, but that, on the contrary, the court should take into consideration, among other things, the whole business of the company—its freight and passenger business, both inter and intrastate. Concerning this proposition, the court said:

If it be found upon investigation that the profits derived by a railroad company from its interstate business alone are sufficient to cover operating expenses on its entire line, and also to meet interest, and justify a liberal dividend upon its stock, may the Legislature prescribe rates for domestic business that would bring no reward and be less than the services rendered are reasonably worth? Or, must the rates for such transportation as begins and ends in the State be established with reference solely to the amount of business done by the carrier wholly within such State, to the cost of doing such local business, and to the fair value of the property used in conducting it, without taking into consideration the amount and cost of its interstate business, and the value of the property employed in it? If we do not misapprehend counsel their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect of its entire line and all its business, interstate and domestic. We cannot concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates for transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business. The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for out of, a common fund; and that its capitalization is on its entire line, within and without the State—can have no application where the State is without authority over rates on its entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business.

Schedules Should Be Fair

Inasmuch as it is improper to consider, in connection with the reasonableness of intrastate rates, the intrastate rates in another State, even upon the same

line of railway, or as well the interstate rates even for property crossing the State in which the rate and matter is being considered, it remains to ascertain on what basis one can fairly consider rates to be reasonable or unreasonable. The most natural proposition is that rates should be made according to cost of service—that is to say, the cost to the carrier—to which should be added an adequate return for the fair valuation of the property used for the transportation of the commodities. No one has been hazardous enough to venture the statement that rates as a whole should not be remunerative. It is true that certain specific rates ought not to be profitable. Considered as a whole, however, there can be no question of doubt that schedules ought to afford a fair return over and above operating expenses.

It is a comparatively easy matter to determine what such return ought to be. Manifestly the rate should be the current rate of interest for such class of business. But, having ascertained the rate, the question then arises on how much principal this rate shall apply. Probably the fairest proposition is what may be termed the fair present value of the property irrespective of its original cost or of its probable future enhancement. This question having been determined or conceded to exist, and it being known how many tons of freight have been carried for a definite length of time and the distance, the proposition appears to be one of mathematics, but it is indeed more. There are about 8,000 articles divided into several classes, among which must be proportioned the several rates.

Mystifying Conditions

But suppose we shall have agreed upon the relation which each class shall bear to every other class, and as well upon the commodities which shall constitute the classes. It must then be recalled that certain of the commodities move relatively long distances; that certain other commodities move in regular volume throughout the year; that certain other commodities are heavy in volume; that certain commodities move but short distances, are erratic and uncertain in the time of shipment, and that the volume is equally changing. If these elements are not mystifying enough, there is another, more serious, applicable to the proposition.

Let us assume a case of a 15 cent rate upon a particular commodity. Upon that rate a certain tonnage is normally moved. The rate is challenged for its unreasonableness and a new rate of 12 cents is substituted, and transportation under the new condition is stimulated, and the return exceeds by a greater percentage the cost of transportation; so that the carrier is making 10 per cent. upon watered stock. One would not be obliged to go far to find a person who is willing to challenge the reasonableness of this rate. The price of transportation is again reduced, and the returns net 12 per cent. If the rate be advanced to 17 cents it is unreasonable on the ground that the cost of transportation is either prohibitory or that the amount of freight bears too great a relation to the value of the commod-

ity; or on the ground that the charge is more than the service is reasonably worth. If it be reduced, the rate is unreasonable because it produces too much return upon the money. Thus, he who fixes the rates is between Scylla and Charybdis; the Scylla of low rates produces too much income, it is charged, and Charybdis of high rates cannot be borne by the commodity, it is alleged.

Cost of Transportation

Much is dependent, however, upon what is meant by the term cost of transportation. The cost of transportation to the user of these facilities is the weight of the commodity multiplied by the rate. The cost of transportation to the carrier is a different proposition. Manifestly, in a large number of instances—in fact, in all—the cost to the carrier ought to be less than the cost to the commodity. It has been the custom to determine cost to the carrier by ascertaining what percentage the operating expenses bear to the receipts. Thus, if the earnings are \$1.20 and the cost of transportation is 90 cents, it has been the habit to state that the cost of transportation is 75 per cent. Why such a fallacy should be tolerated cannot be readily understood. Nevertheless, it has been accepted. There have been witnesses who have stated that the cost of carrying intrastate business exceeds the cost of carrying interstate business by 10 per cent. To this 75 per cent. it has been their custom to add 10 per cent. and perhaps another per cent. for taxes and various charges. Not infrequently such process of reasoning has led to the conclusion that intrastate business has been carried at less than cost.

As an illustration of this method of reasoning a paragraph from the case of *Smyth v. Ames* (169 U. S. 466) is opportune, for this is one of the earliest cases dealing with the subject :

Take the case of the Burlington road from July 1, 1890, to June 30, 1891. Looking at the entire business done on it during that period within the limits of the State, we find that the percentage of operating expenses to earnings on all business—which, as stated, does not include the extra cost of local business—was 66.24. Add to this the extra cost of local business, estimated at least 10 per cent., and the result is that, under the rates charged during the period stated, the cost to the Burlington Company of earning \$100 would have been \$76.24. Now, if the reduction of 29½ per cent. made by the act of 1893 had been in force prior to July 1, 1891, the company would have received \$70.50, as against \$100, for the same services, showing that in that year the operating expenses would have exceeded the earnings by \$5.74 in every \$100 of the amount actually received by it.

This Theory Controverted

This theory has been recently combated by the Railroad Commission of Kentucky in an opinion rendered after complaint and hearing concerning the intrastate rates upon various roads operating in that State. The commission first considered those elements which ought to have weight in a matter of this kind and then ascertained the relation which exists between inter and intra-state rates, and arrived at the conclusion "that a

fair estimate of the cost of conducting the State traffic per ton mile is 11.4 per cent. higher than that of conducting the interstate traffic."

The opinion reads (in part) :

The Commission understands that the theory of the defense of each of the defendants, and particularly that of the Louisville & Nashville Railroad, is based upon the plan which seems to have been agreed upon by complainants and the railroads in the case of *Smyth v. Ames*, wherein the *percentage of operating expenses to gross receipts* in Nebraska was used to measure the cost of doing all the business. The defendants herein have fallen into the same error that was committed in the Nebraska case, as we shall hereinafter endeavor to demonstrate. However, certain general rules or principles are stated by the Supreme Court of the United States in the cases of *Smyth v. Ames*, 169 U. S., 466; and *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 185 U. S. 267, and which, taken together, appear to embrace the following propositions:

1. The value of the property used by the carrier in the service must be ascertained, or, at least, justly estimated.
2. While the amount and value of the stock and bonds must be considered, such amount and value are in no way conclusive upon the question of the actual property value, as the amount and market value of stocks and bonds can only bear upon that question by way of comparison. The actual property value is the cost of reproduction with such deductions therefrom as may be necessary to represent depreciation and thereby indicate the present condition of the property. If the actual property value is independently determined, that value cannot be increased or decreased by the amount of securities the company has seen fit to issue.
3. A sufficient return from operation must be allowed to provide for necessary operating expenses and for taxes as a current yearly charge, and the operating expenses include such renewals and repairs as are necessary to keep up the property.
4. While allowance should be made to pay a proper return upon the ascertained fair valuation of the property used in the service involved, it must always depend upon the circumstances of the road, manner and method of its operation, the character and amount of the traffic involved, and the extent to which the question is affected by the paramount right of the public to enjoy reasonable transportation charges.

Equal Protection Cannot Be Denied

These principles are all definitive of the prohibition in the Federal Constitution that no person shall be deprived of his property without due process of law or be denied the equal protection of the laws. While this restriction exists and must not be evaded, the decisions of the court of last resort give finality to the action of the State acting through its Legislature, or a commission exercising properly delegated powers.

It was apparently contended in the *Smyth-Ames* case, on behalf of those attacking the Nebraska rates fixed by the Legislature, just as it is here, *that it cost from 10 to 25 per cent. more to conduct the purely intra-state business than it did to conduct the average of all business within the State*, and that this excess cost, or per cent., should be added to the proportion of operating expenses to gross receipts for all traffic to indicate the cost to the carrier for the intrastate business. But it does not appear that this contention was seriously disputed or opposed in any such way as to attract the attention of the court. In other words, this theory for ascertaining the cost of doing the State traffic seems to have been conceded by counsel for the State as well as for the railroads in the Nebraska case. The only point of difference regarding this proposition seems to have been that counsel for the State of Nebraska contended that the gross receipts

and the operating expenses from all traffic within the State of Nebraska should be considered, whereas the contention of the attorneys for the railroads was that only the purely State traffic should be considered, without reference to what the roads earned upon interstate traffic, or what it cost, to produce the interstate traffic. It may be true that the rates charged on the purely State business in Nebraska may have been already so low that taken in gross as represented in total earnings from that business and compared with the actual expenses for doing the intrastate business, the percentage of these expenses to these earnings, was, in fact, at least 10 per cent. more than the percentage of operating expenses to earnings from all traffic.

An Untenable Theory

However this may be, we are of the opinion that the theory of those acting for the carriers in the Nebraska case, as is the theory advanced by counsel in the case at bar, that the percentage of operating expenses to gross receipts represents cost, was, and is, wholly untenable.

The answers and statements made by the defendants embrace claims of greater cost of operation for the purely State freight traffic ranging from 10 to 25 per cent. above the average cost of doing all the State and interstate business of Kentucky on their respective lines. The defendants have insisted upon a method of stating this increased cost which calls for discussion in this opinion. The Louisville & Nashville, though doing a much larger State freight business than any other carrier in Kentucky, and whose aggregate traffic also greatly exceeds that of any other defendant, asserts that the greater cost of doing the State freight business amounts to 25 per cent., and in stating its claim his company takes the percentage of its total operating expenses to total earnings in Kentucky, State and interstate included, which is reported as 69.16 per cent., and adds 25 per cent. thereto to cover the cost of the State business. This amounts to 94.16 per cent. of the total earnings from intrastate freight in Kentucky. And to this it also adds a proportion of the State taxes amounting to 3.42 per cent., giving a total of 97.58 per cent. of the gross earnings on State freight as its asserted cost of carrying such freight.

The fallacy of these claims lies in the fact that 69.16 per cent. does not stand for total cost at all, nor for any part of the cost. The factor 69.16 simply represents the *relation* between the total cost expressed in dollars and cents and the total receipts expressed in dollars and cents. The cost and the earnings may both be high or both be low, and yet the same relation may exist. The cost of doing a particular part of the whole traffic may be more than the average cost, and yet the per cent. of that cost to high earnings on that particular traffic may be less than the percentage of the whole cost to the gross earnings. The expense, or cost, to the carrier of a given amount of transportation has no necessary connection with the earnings, or profits, derived from that transportation. Since the cost, either total or average, is ascertainable solely from its own elements, it can never be expressed by percentage.

An Illustration Given

Suppose a line of road carried for a given period only three tons of freight and no passengers, its total operating charge being applicable to the earnings of those three tons, and assume the following costs and charges for each ton:

- A. One ton, cost, 70 cents. Earnings or charge, 90 cents.
- B. One ton, cost, 60 cents. Earnings or charge, 80 cents.
- C. One ton, cost, 20 cents. Earnings or charge, 80 cents.

Three tons, cost \$1.50. Total earnings or charges, \$2.50.

The percentage of the operating expenses, or total cost, to the total gross earnings would be (\$1.50 divided by \$2.50) 60 per cent.

The general or average cost would be (\$1.50 divided by 3) 50 cents per ton. Now, suppose it is desired to state by

percentage how much more "ton A" cost than the general or average cost of 50 cents. Knowing the cost of "ton A" to be 70 cents, and the general cost to be 50 cents, it is readily found that the difference is 40 per cent. It can, therefore, be claimed, and by correct mathematics demonstrated, that "ton A" cost the carrier to transport it 40 per cent. more than the general average cost.

Now, if it is desired to state by percentage the cost of "ton A" (70 cents) to the earnings or charge for the transportation (90 cents), the percentage is easily found by dividing 70 cents by 90 cents, with a result of 77.77+ per cent. or 17.77+ per cent. in excess of the 60 per cent. relation of total expenses to gross earnings.

In the same way, and by the same rule of computation, "ton C," which cost the carrier only 20 cents to transport and yields an earning charge of 80 cents, shows a percentage of cost to the earning charge of only 25 per cent., or 35 per cent. less than the 60 per cent. relation of total expenses to gross earnings.

If, instead of ascertaining the true percentage of cost to the earning charge for "ton A" to be 77.77+ per cent. a claim is set up that "ton A" costs 40 per cent. more than the general or average cost, and should on that account be added to the percentage of total operating expenses to gross earnings (60 per cent.), the addition makes the claimed cost of "ton A" (40 per cent. plus 60 per cent.) 100 per cent., and consequently that "ton A" was carried without any profit whatever.

Not the Actual Cost

Carrying the illustration to its logical conclusion, the same computation must be made for "ton C," which cost 20 cents to transport, and 30 cents less than the average or general cost of 50 cents. This difference of 30 cents is 60 per cent. of the general or average cost. If the cost above the general or average cost of "ton A" is to be added to the percentage of total operating expenses to gross earnings (60 per cent.), then for "ton C" the cost of its transportation below the general or average cost must be deducted from the percentage of total operating expenses to gross earnings (60 per cent.). As the cost of "ton C" is 60 per cent. less than the general or average cost, it follows, by this rule, that it cost nothing whatever to transport "ton C," and that the charge received for its earnings was all profit. The foregoing illustration, or example, we think, puts before the mind in the simplest form the wide distinction between actual cost or actual general cost on the one hand, and on the other hand percentage of total cost to total earnings, and shows, *reductio ab absurdum*, the total inadmissibility of the defendant's claim for a minimum cost to it for doing the intrastate Kentucky business represented by adding 25 per cent. to 69.16 per cent. (the percentage of all expenses to all earnings), and making a total of 94.16 per cent., to which it adds taxes, 3.42 per cent., and asserts a total cost for that business of 97.58 per cent. A claim of 28 per cent. additional on this basis, instead of 25 per cent., would have extinguished every vestige of profit and put it in the position of transporting the large intrastate traffic in Kentucky at a positive loss, thereby adding unjustly to the burden of the intrastate business.

The examples above given show that the ratio of operating expenses to earnings is in no sense the statement of the actual cost, and the cost cannot, viewed by itself, be expressed by percentage at all. Whatever the facts as to the actual cost may have been in the Nebraska case, it is, we think, quite clear that in this case the cost is one thing and the percentage or ratio of expenses to earnings is an altogether different thing, and that neither can be used to express or indicate the other. It is not too much to say of the Nebraska case that the contentions of the attorneys for the State were directed chiefly to establishing the proposition that the action of the State could not be declared in-

valid unless the rates fixed should result in a loss from operation of the road in all business, interstate as well as State, and that the assertion of the State's authority played a principal part in their arguments, resulting possibly in failure to analyze the testimony or to supply necessary testimony on behalf of the State.

With all this, however, the Kentucky Commission has nothing to do. Whether the theory of the defense as applied to the facts of the case is correct or incorrect, and what the actual situation is, are the chief matters for determination in respect of cost. That such theory of defense is altogether inadmissible is plain from the foregoing analysis.

We are of the opinion that the term or factor used by the defendants for the purpose of stating the cost of doing the State freight business and all statements submitted which are based upon the use of that term or factor, cannot be accepted.

An Analysis

At the request of the Commission the defendant, the Louisville & Nashville Railroad, submitted a statement showing in detail its apportionment of operating expenses between passenger and freight business. We have endeavored to make a fair analysis of this statement, in order to arrive at a fair approximation of the cost to that defendant for doing the freight service in Kentucky during the year 1905, upon a ton-mile basis, which is the correct basis, and have endeavored to so apportion this cost as to show the relative cost per ton-mile of intrastate and interstate freight traffic. This analysis shows that there is properly chargeable to such freight traffic the sum of \$6,535,753.09, of which there is chargeable to haulage or transportation proper, \$5,014,823.22, and to services other than haulage or transportation, \$1,520,929.87. The sum total of the items charged against haulage, \$5,014,823.22, is fairly apportionable between State freight and interstate freight upon the basis of ton-miles of haul of each, while the sum total of all other items, \$1,520,929.87 is fairly apportionable between these two classes of freight upon the basis of tons each.

The total number of tons of freight carried, both State and interstate, within the State of Kentucky during the year in question is, according to the returns of the defendant, 9,358,270, and the total number of ton-miles of transportation during the same period within the State of Kentucky is 1,291,340,617. The average haul of State freight was 96.97 miles. The average haul of interstate freight was 148.82 miles. Dividing that portion of the charge, \$1,520,929.87, the amount to be apportioned upon the basis of tons, by the total number of tons, 9,358,270, gives an average charge per ton for station loading and unloading, advertising, damage, and the like, i. e., for all services except haulage, of 16.25 cents. This charge being divided by the average haul of the State traffic (97.96) gives the corresponding charge per ton-mile against State traffic on account of all services except haulage, amounting to .1659 cent. Dividing the same average charge per ton by the length of haul upon the interstate traffic, 148.82, gives the average charge for this portion of the interstate service, .1092 cent.

11.4 Per Cent. Per Ton-Mile

The total charge for haulage, \$5,014,823.22, divided by the number of ton-miles of haul, which is 1,291,340,617, gives the haulage charge per ton-mile .3884 cent. Adding to this for the State traffic .1659 cent, gives the fair estimated cost of all services for State traffic per ton-mile, .5543 cent, while in like manner the fair estimated cost per ton-mile of interstate traffic is .4976 cent (the sum of .3884 cent and .1092 cent), thus showing that the fair estimate of the cost of conducting the State traffic per ton-mile is 11.4 per cent. higher than that of conducting the interstate traffic.

On the other hand, the earnings per ton-mile of State

traffic are 1.307 cents, while those per ton-mile of interstate freight are only .759 cent, showing that the gross profit per ton-mile of State freight is .753 cent, as against .261 cent gross profit per ton-mile on interstate freight; so that at the rates now in force the gross profit per ton-mile on State traffic is nearly three times as great as that on interstate freight.

It will also be observed that where the State traffic costs per ton-mile .5543 cent, and brings in earnings of 1.307 cents per ton-mile, the operating ratio on the State traffic is 42.40 per cent., while on the interstate traffic, with a cost per ton-mile of .4976 cent and earnings per ton-mile of .759 cent, the operating ratio is 65.57 per cent.

The estimated valuation submitted by the Louisville & Nashville as showing the actual present value of the property is the only valuation shown, although this evidently contains a number of items open to serious question. This valuation, which applies to all the property in Kentucky and includes equipment as well as physical property, is estimated at \$70,530,727.91. The present supply of capital seeking investment is such that bonds upon railway property like that of the defendant can readily be marketed upon the basis of from 4 to 4½ per cent. annual return. Stock shares upon similar property can be readily marketed upon the basis of not to exceed 4 to 5 per cent. annual return, and in addition on the whole actual capital of about 1 to 1½ per cent. is usually ample allowance for accumulating surplus. The Louisville & Nashville stock now sells currently at from 140 to 150, and is considered upon the market as fairly certain to yield 6 per cent. dividends, making the annual return upon the investment range from 4 2-7 to 4 per cent. That is to say, the investor who buys a share of Louisville & Nashville stock and pays for it \$150 does so upon the expectation of deriving from it an annual dividend of \$6, which is 4 per cent. upon his investment. He thus says that he considers, under all the circumstances, that 4 per cent. per annum is a fair rate of annual return upon the investment, and one that he is willing to accept.

A Difficult Task

The annual addition to surplus in the Louisville & Nashville Railroad Company is somewhat less than the amount paid out in dividends, having been for the year ended June 30, 1905, about nine-tenths, and for prior years still less, and such devotion of income to surplus more than sufficiently insures the payment of dividends. It has, in fact, resulted in the accumulation of a surplus of undivided profits, beginning with June 30, 1894, and ending on June 30, 1905, which amounts to \$14,899,106. This alone is more than sufficient to pay 6 per cent. dividends for four years. To obtain on this basis the average percentage by which to compute the annual allowance for the actual valuation, we take, on account of the funded debt, 2-3 of such capital at 4.25 per cent., which equals 2.83 per cent.; on account of stock, 1-3 of such capital at 4.30 per cent., which equals 1.43 per cent.; on account of accumulation and maintenance of surplus, an allowance of 1.30 per cent. is ample. These figures added together give a percentage of 5.56 per cent. and indicate that an allowance of 5.6 per cent. on account of charges upon capital is extremely liberal. This applied to carrier's estimate of actual valuation of its Kentucky property, gives an annual charge on account of valuation, amounting to \$4,450,488.75, including taxes, which are stated to be \$500,752.75.

To apportion this annual charge on account of valuation, first, as between the States passenger and freight business, and do so with fair regard to the carrier's interest as well as those of the public, is a task of no little difficulty and one which we are not advised has been attempted heretofore in any similar case in any State, nor have we been assisted in this respect in any degree by the defendant car-

riers. We have before us simply the total actual valuation of the property in Kentucky as estimated by the carrier's consulting engineer. We have first had to determine the proper annual charge to be allowed for such valuation, and in doing so we have taken into account the market value of the carrier's stocks and bonds and the maintenance of its surplus. Now, how shall this Commission, guided by no precedent, apportion this current annual charge of (in round figures) \$4,450,500 and arrive at the proper portion of that charge to be laid against the State freight traffic of the defendant in Kentucky? Certainly neither gross earnings nor net earnings can be a satisfactory basis of apportionment of these charges for this purpose, particularly where the purpose of the apportionment is to determine the propriety of the rates from which these gross earnings and net earnings result. In this case the earnings result from the rates in question. This annual charge for valuation is in a sense part of the carrier's cost, and to attempt to justify the apportionment of costs by the earnings resulting from rates, and then to justify the rates by the apportionment of costs based on the earnings resulting from the rates, would clearly be reasoning in a circle. Nor can any suitable basis for apportionment of this annual charge on account of valuation be derived from transportation statistics relating to passengers and freight, for the obvious reason that there is no common transportation unit, except the train-mile or car-mile, and the use of the train-mile or car-mile would give no help in apportioning between State freight and interstate freight, because no trains are devoted solely to either class of freight, nor is any considerable number of cars assigned exclusively to either class of freight.

Operating Expenses as a Base

Plainly, then, we have left only the operating expenses as a basis of apportionment. The operating expenses for all traffic in Kentucky are reported to be \$10,127,126, the annual charge on account of valuation of \$4,450,500 is 43.95 per cent. of the reported total cost of operation. The operating expenses chargeable against State freight, as made up from the figures furnished by the carrier, are \$1,235,023. Applying this factor of 43.95 per cent. to the estimated cost to the carrier of doing the State business gives \$542,744 as the actual valuation, including taxes. Adding this sum, \$542,744, to the estimated operating expenses, \$1,235,023, amounts to \$1,777,767. This sum represents the operating expenses of the carrier on the State traffic in Kentucky in 1905, and a fair return to that carrier upon the use of its property in the conduct of that business for that year. This amount includes not only the fairly apportioned cost of operation and taxes, but also net earnings of 5.6 per cent. on the actual value of the property. It also includes, what have not been heretofore mentioned, a liberal allowance (more than 13 1-3 per cent. of reported operating expenses), out of which to make permanent improvements to the property, and a considerable sum, amounting to \$259,842.46, wrongfully charged against Kentucky in the statement of salaries paid to general officers and general office clerks. The salaries and wages paid to all general officers and general office clerks whose headquarters are at Louisville, despite the fact that their services are in large part on account of parts of the system outside of Kentucky, were charged by the carrier wholly to Kentucky. We think these salaries and wages should be apportioned upon no higher basis than the average percentage shown for wages paid to other officers and other employees. The actual amount exacted by the Louisville & Nashville Railroad Company for the State freight service over its lines is \$2,552,273.62. This exceeded the allowance above made, namely, \$1,777,767.79, by \$774,506.63.

The Commission does not, of course, undertake to say that the computations, the results of which are hereinbefore set forth, are mathematically accurate, for it is universally

conceded that any exact statement of the cost to a carrier for performing its freight service as compared with its passenger service, or for performing a part of the freight service as compared with the remainder, cannot be made. The Commission has merely done the best it could with the figures and facts before it, but it has endeavored in all its computations to make the most liberal allowance for actual valuation. Yet, with all this, we have a result showing charges by this carrier for intrastate traffic, within the State of Kentucky, which are more than \$774,000 in excess of just and reasonable rates.

Mr. Justice Brewer's Opinion

While the United States Supreme Court had in another case considered various methods of determining this result, the recent opinion of the Kentucky Railroad Commission ignored it. The method used in the South Dakota case and the fallacy of it can best be seen from the opinion of Mr. Justice Brewer. In that case (*C. M. & St. P. R. R. Co. v. Tompkins*, 176 U. S. 171) the court said:

If the schedule of rates prescribed by the defendant had been in force during the four years, and the same amount of business had been done by the company, the reduction in gross receipts from the passenger business would have been 15 per cent., and from the freight business 17 per cent. Of course, the cost of doing the business would be substantially the same. The court found the value of the plaintiff's property in South Dakota to be \$10,000,000, although, according to the testimony, it was bonded for over \$19,000,000. It was held that it was not fair to consider that sum, \$10,000,000, the value of the property employed in doing local business, for it was also used in doing interstate business; and that the true way to determine the value of the property which could be regarded as employed in local business was by dividing the total value of \$10,000,000 in the same proportion that existed between the amount of gross receipts from interstate business and that from local business, each of which amounts was, as we have seen, accurately shown by the testimony. Upon that basis of division it found that the value of the company's property employed in local business was for the first year, \$2,200,000; the second year, \$2,600,000; the third year, \$2,100,000, and the last year, \$1,900,000, and also that the gross receipts from local business were for the first year, 18.5 per cent. of the valuation; for the second year, 12.7 per cent; for third year, 15.6 per cent., and for the last year, 16.3 per cent. In other words, for these several years the company received as compensation for doing its local business the per cent. named of the real value of the property used in doing that business. Then, proceeding on the supposition that the defendant's schedule had been in force and the rates reduced as therein prescribed during these four years, it divided the valuation of \$10,000,000 in the like proportion of the receipts from interstate business to the receipts from local business as thus diminished, and upon such division found that the valuation of the plaintiff's property engaged in local business would have been, for the first year, \$1,900,000; for the second year, \$2,300,000; for the third year, \$1,800,000, and the last year, \$1,600,000; and upon such basis that the gross receipts from local business would have amounted to 18 per cent. of the value of the property for the first year, 12.1 for the second, 15.3 for the third, and 16.2 for the last. Upon this it held that the difference between the per cent. of receipts in the two cases was slight, and that there was no change in what may rightfully be called the earning capacity of the property sufficient to justify a declaration that the reduced rates prescribed were unreasonable. In other words, it was of the opinion

that the earning capacity was so slightly reduced that it could not be affirmed that the new rates were unreasonable.

Fallacious Reasoning

But that there was some fallacy in this reasoning would seem to be suggested by the fact that although the defendant's schedule would have reduced the actual receipts 15 per cent. on the passenger and 17 per cent. on the freight business, the earning capacity for the last year was diminished only 1-10 of 1 per cent. Such a result indicates that there is something wrong in the process by which the conclusion is reached. That there was can be made apparent by further computations, and in them we will take even numbers as more easy of comprehension. Suppose the total value of the property in South Dakota was \$10,000,000, and the total receipts both from interstate and local business were \$1,000,000, one-half from each. Then, according to the method pursued by the trial court, the value of the property used in earning local receipts would be \$5,000,000, and the per cent. of receipts to value would be 10 per cent. The interstate receipts being unchanged, let the local receipts by a proposed schedule be reduced to one-fifth of what they had been, so that instead of receiving \$500,000, the company only receives \$100,000. The total receipts for interstate and local business being then \$600,000, the valuation of \$10,000,000, divided between the two, would give to the property engaged in earning interstate receipts, in round numbers, \$8,333,000, and to that engaged in earning local receipts, \$1,667,000. But if \$1,667,000 worth of property earns \$100,000 it earns 6 per cent. In other words, although the actual receipts from local business are only one-fifth of what they were, the earning capacity is three-fifths of what it was. And, turning to the other side of the problem, it appears that if the value of the property engaged in interstate business is to be taken as \$8,333,000, and it earned \$500,000, its earning capacity was the same as that employed in local business—6 per cent. So that although the rates for interstate business be undisturbed, the process by which the trial court reached its conclusion discloses the same reduction in the earning capacity of the property employed in interstate business as in that employed in local business, in which the rates are reduced. Again, in another way, the error of the court's computation is manifested. The testimony discloses that the operating expenses of the entire system during each of the four years were over 60 per cent. of the gross receipts. If the cost of doing local business in South Dakota was the same as that of doing the total business of the company, then the net earnings of that local business would not exceed 40 per cent. of the gross receipts. Reduce the gross receipts 15 per cent.—and the reduction by the defendant's rates was 15 per cent. on passenger and 17 per cent. on freight business—it would leave only 25 per cent. of the gross receipts, as what might be called net earnings, to be applied to the payment of interest on bonds and dividends on stock. But the testimony shows that the cost of doing local business is much greater than that of doing through business. If it should be 85 per cent. of the gross receipts (and there was testimony tending to show that it was as much, if not more) then a reduction of 15 per cent. in the gross receipts would leave the property earning nothing more than expenses of operation. These computations show that the method which the court pursued was erroneous, and that without a finding as to the cost of doing the local business it is impossible to determine whether the reduced rates prescribed by defendants were unreasonable or not.

Improper Methods

From the two cases in which the Supreme Court has considered the cost of transportation it is safe to arrive at the conclusion that none of the methods then

before the court was proper. The reasoning of the Nebraska case seems clearly to be erroneous, for the bald proposition that the percentage which operating expenses bears to receipts is the cost of service is meaningless. In the South Dakota case the first method used falls because it cannot be proven by either the second or third method.

The method used by the Kentucky Railroad Commission in its recent opinion concerning rates upon the Louisville & Nashville Railroad is clearly more elaborate if not more correct than those to which reference has been made by the Supreme Court. This method cannot claim to be mathematically correct; for example, the valuation of the railroad's property in Kentucky upon which it is to be allowed to earn interest is found by ascertaining the relation between the operating expenses of intra and interstate traffic. This assumes that the same operating expenses are an indication of cost. In many instances this cannot be true. For, given two lines of railway, one with numerous curves and grades, constructed at a cost of \$20,000 per mile, and another through country of the same character, the grades and curves eliminated, and costing more, it is clearly seen that the cost of operation upon the first road would be greater than on the second, and yet the cost of construction is, say, 40 per cent. of the second supposed road.

Independent of the prohibition in the United States Supreme Court cases against any comparison between inter and intrastate rates, or between intrastate rates of two or more States, the mathematical difficulty amounts to as great, if not as forcible, a prohibition as those named by the judiciary. At times it has been indicated that with uniform accounts and compilation of statistics not now obtainable some definite results might be secured. The Kentucky Commission appears to have had before it every element which could be reasonably asked. And yet it is compelled to make certain assumptions which may or may not be true. These assumptions leave room, it appears, in which there could be a sufficient play by way of variation of rates that they could be either unreasonably high or unreasonably low.

Railroads Win in Virginia

In the Virginia Supreme Court of Appeals Judge Cardwell handed down an opinion affirming the decision of the State Corporation Commission declaring the 2 cent passenger rate act, passed by the Virginia Legislature, contrary to the Fourteenth Amendment of the Constitution of the United States. It was a test case, involving the requirement that the railroads place on sale 500 mile 2 cent rate books.

The opinion of the court adopts the greater part of the opinion of the corporation commission as its own, and fully sustains the view taken by that body, that the case is controlled by a decision of the United States Supreme Court in the Michigan case.

Through Rates and the Sum of Locals Again

BY JAMES E. JOHNSTONE

It would probably be easier to ascertain the name of the man who struck Billy Patterson than to find out the one who raised the question concerning the discrepancies between through rates and the sum of locals. It seems reasonably certain, however, that the question has been brought into prominence by reason of the reported decision of the carriers to the effect that the through published rate is, under the law, the only legal rate. This decision of the transportation company was made public shortly after the passage of the rate law of 1906. It having been the custom of certain people, particularly those who have in their employ traffic managers, to bill goods to some junction or transfer point, and upon their arrival there to rebill them to destination, and by this process to save some freight. The decision of the carriers naturally caused consternation.

Beginning of the Movement

So far as the movement made in this behalf is concerned, it seems to rest with the American Shippers' Association, which presented to the Interstate Commerce Commission in August last, among other resolutions, the following:

Whereas, Some railways have taken the position that the only legal tariff under the law is the through rate, regardless of the fact that it may be much higher than the sum of two legally published and filed tariff rates applying on some intermediate point; and

Whereas, The Commission in the Hilton Lumber Case, decided in April, 1901, ruled that under such circumstances a through higher published tariff rate was illegal, to the extent that it was higher than the sum of the locals; therefore, be it

Resolved, That we should insist that the railway companies recognize that the sum of locals is the only legal rate when such sum is lower than a higher published through rate.

This resolution was presented August 28, 1906, and had for its purpose the exercise by the Commission of the discretion granted to it under the rate law.

A month later the Commission, by its Tariff Circular No. 4-A, issued a notice permitting, until December 31, 1906, a reduction of the through rate to conform with the sum of the locals, upon one day's notice; this, of course, is permissive to the carrier and not obligatory upon it. This notice reads:

Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points, by the same route, such higher joint rate may, *until December 31, 1906*, be changed, by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

Desire to meet the rates of a competing road or line which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.

The language of this notice provided for cases where the sum of the locals between the same point of origin and destination by the same route was less than the through rate. On October 12, 1906, by Tariff Circular No. 5-A, the Commission amplified its ruling to cover the sum of locals between the same points by the same or another route. This notice reads:

Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points, by the same or another route, such higher joint rate may, *until December 31, 1906*, be changed, by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

The Latest Ruling

Neither of these interpretations was satisfactory to the shippers. Consequently, on November 16, by Tariff Circular No. 6-A, the Commission made the following ruling:

"THRU" RATES WHICH EXCEED THE SUM OF LOCALS.—Many informal complaints are received in connection with regularly established "thru" rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. The Commission announced in its Tariff Circular No. 5-A, of October 12, 1906, a rule permitting practically immediate reduction of a "thru" rate which is higher than the sum of the locals between the same points. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the "thru" rate, which is higher than the sum of the locals between the same points, as *prima facie* unreasonable, and that the burden of proof would be upon the carrier to defend such higher "thru" rate.

The importance of determining what is a proper legal rate is a burden at the present time cast by the law not only upon the carrier but as well upon the shipper. The shipper is presumed to know that the rate which he pays or agrees to pay has been duly filed and published in accordance with the law. If he shall attempt to secure reduced transportation rates, he brings himself under the provisions of the statute.

In addition to this, many shippers are inquiring whether or not it be proper for them to bill goods from point of origin to the transfer point (assuming that the transportation be interstate) and from there in person, by letter or by agent, billing it to destination (assuming another interstate rate).

It is well known that the usual rule concerning the relation between the through rate and the sum of the locals is that the through rate is generally less than the sum of the locals. There are said to be, however, a considerable number of cases where the through rate is greater than the sum of the locals. Naturally, the shippers do not care to pay more for through transit than they would be compelled to pay if the transit be

broken into its several component parts, notwithstanding the delays which are the results of such broken transit. There can be no doubt that the attempt to secure reduced transportation charges by factitious billing is simply "whipping the devil around the stump." The shipper well knows that he desires the property to be ultimately delivered at "C"; he has a contract by which he has sold property to a customer at that destination. Of these facts he is well aware when he bills the property to the junction point or transfer point "B." His cupidity leads him to seek an advantage over his selling competitor. Or, if the consignee directs such factitious billing, he is attempting to secure some advantage over his competitor at "C." In short, the intent and purpose of such action is to beat one's competitor, and with a swing of the same club hit the carrier.

Case of Porter v. Railroad

No adjudicated case seems to be reported concerning the sum of locals, where each of those locals was an interstate rate. An important and well considered case, however, prohibits the subterfuge of adding to the interstate rate a State commission intrastate rate in order to secure transportation at less than the through interstate rate.

The intending shipper in this case inquired of the agent at Stuttgart, Ark., the rate on lime in carloads from Erin, Tenn., a Louisville & Nashville point, to Stuttgart. He was advised by the agent that this interstate rate was 22 cents per 100 pounds; he also ascertained that the rate from Erin, Tenn., to Brinkley, Ark., was 14 cents, and the rate from Brinkley to Stuttgart was 5 cents; this last mentioned rate being one fixed by the Arkansas Railroad Commission. He thus saw his opportunity of securing transportation at a reduction of 3 cents per 100 pounds—namely, at 19 cents instead of 22 cents. He caused the shipment of a carload of lime to be consigned to him at Brinkley. Upon the arrival of the car at that point he paid the freight from point of origin to Brinkley, and, without unloading or opening the car, reshipped it over the St. L. S. W. Ry. to Stuttgart. When the car arrived at destination the shipper tendered freight at the rate of 5 cents per 100 pounds, which was refused, the agent demanding 12½ cents per 100 pounds, which, it appears, would have been the pro rate of the delivering road had the shipment been a through one from Erin to Stuttgart. The Supreme Court of Arkansas, in disposing of the case upon these facts, said:

The question presented to us now is whether appellant had the right, under the circumstances detailed above, to take advantage of the local freight rate from Brinkley to Stuttgart fixed by the Arkansas Railroad Commission, or whether the consignment must be deemed continuous from Erin to Stuttgart, and therefore an interstate commerce transaction. The lower court held that it was interstate commerce, and rendered judgment against appellant (shipper) at the rate of 8 cents per hundredweight, which, with the rate of 14 cents paid from Erin to Brinkley, made up the through rate of 22 cents from Erin to Stuttgart. We are

not concerned about the correctness of the judgment, inasmuch as appellee does not question it, further than to inquire whether or not it imposed upon appellant a more burdensome freight rate than he was entitled to. There is no dispute about the facts or that appellant intended to procure continuous transportation of the lime from Erin to Stuttgart; the only question being whether he had the right to take advantage of the situation presented, viz., the interstate rate from Erin to Brinkley, and the railroad commission rate from Brinkley to Stuttgart, in order to secure a rate through to the latter place at less than the interstate rate fixed between the two points. In other words, as Erin, Tenn., was the initial point of consignment, and Stuttgart, Ark., was intended as the final destination, did the character of the consignment as an interstate transaction continue until the latter point was reached? The question is by no means free from doubt, and there are few decisions of the courts bearing upon it, but those to which our attention has been directed sustain the ruling of the circuit judge. In *Augusta, S. & R. Co. v. W. & T. R. Co.* (C. C.) 74 Fed. 522, it was held (quoting from the syllabus) that "the fact that a railroad lies wholly within one State does not exempt it from obligations imposed by the Interstate Commerce Act, if the transportation over it is part of a shipment from one State to another, or to or from a foreign country."

In *Interstate Com. Com. v. Bellaire, Z. & C. Ry. Co.* (C. C.) 77 Fed. 942, and *United States v. Chicago, K. & S. R. Co.* (C. C.) 81 Fed. 783, it was held that a railroad operating wholly within a State and not participants in a common arrangement for interstate shipments were not within the terms of the Interstate Commerce Act. There are decisions of the Interstate Commerce Commission to the same effect. *Mo. & Ill. R. T. & L. Co. v. Cape Girardeau & S. W. Ry. Co.*, 1 Interst. Com. R. 30; *New Jersey Fruit Exc. v. Central R. R. Co.*, 2 Interst. Com. R. 142. The case of *Cin., N. O. & Tex. Pac. Ry. Co. v. Int. Com. Com.*, 162 U. S. 184, is relied on to some extent by both sides here, but we do not find it conclusive of the particular question. There the railroad was operated wholly within the State of Georgia, but carried freight in that instance under a through bill of lading, and under an arrangement with other carriers for continuous shipment from other States. Mr. Justice Shiras, speaking for the court, said: "All we wish to be understood to hold is that when goods shipped under a through bill of lading, from a point in one State to a point in another, are received in transit by a State common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading we are referring to the usual methods in use by connecting companies, and must not be understood to imply that a common control, management or arrangement might not be otherwise manifested."

Two Similar Cases

In the two cases (*State v. Gulf, C. & S. F. Ry. Co.* (Court of Civ. App., Texas). 44 S. W. 542, and *Cutting v. Florida Ry. & Nav. Co.* (C. C.) 46 Fed. 641), the same principle was involved as in the case at bar, and was decided contrary to the contention of the appellant. The only difference between these cases and the case at bar is that in the former the shipper intended to ship freight out of the State; but in order to take advantage of the lower interstate rate from another point in the State, attempted to ship to that point and enforce the local rate thereto and then re-ship to the intended final destination. The courts in both cases cited held that it was an interstate transaction from the initial point of shipment and that the State commission rates could not be enforced. The Texas court, referring to the case of *Houston Direct Nav. Co. v. Ins. Co. of North*

America, 89 Tex. 1, said: "We regard the decision as directly in point, and therefore hold that the shipment Long & Co. desired to make over appellee's road would have been interstate commerce, and consequently not subject to regulation by the State or its railroad commission." Those two cases are decisive of the question presented in this case, and are supported by sound reason.

A section of the Federal Interstate Commerce Act is as follows: "Continuous carriage from point of shipment to point of destination. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act."

This section clearly prohibits the carrier from doing, either directly or indirectly, what the shipper has attempted to do in this case, and we see no reason why it should not be a protection to the carrier as well as a limitation upon its acts. As we understand them, the Federal statutes providing for the regulation of interstate commerce, as well as the statutes of this State providing for the regulation of interstate railroad traffic rates, are designed for the protection of shippers, each covering a separate field of operation, the latter yielding to the former where there is possible conflict. The rate fixed under State legislation cannot be used to affect or frustrate the rate fixed under the superior power. To permit that would be a regulation of interstate commerce by State laws, a power conferred solely by the Constitution upon Congress. *L. & N. R. R. v. Eubank*, 184 U. S. 47.

The decisions of the Interstate Commerce Commission hereinbefore cited are not in conflict with the views here stated. In those cases the question presented was one of jurisdiction of the Commission to regulate an interstate rate. The question we are dealing with here is whether the State commission rate can be demanded and enforced in favor of the shipper on a consignment which was, in fact, intended to be a continuous interstate shipment, but which has been interrupted inside the State for the sole purpose of evading the interstate rate. We say that it cannot be done. The consignment is an interstate transaction and continues to be such until the final destination is reached. (*Opinion by Justice McCulloch, in Porter v. Railroad*, 95 S. W. 454.)

The Hilton Lumber Case

One of the decisions of the Commission dealing with a case where the through rate was more than the sum of the locals has been the cause of considerable comment in view of the recent discussion concerning this matter. This case, the Hilton Lumber Case, was decided April 10, 1901. The facts of this case were substantially these: The rate on lumber in carloads from Wilmington, N. C., to certain Eastern points on the through published tariff was less than the sum of the locals from Wilmington to Norfolk, and from Norfolk to same destinations. The through rates exceeded the combined locals by $1\frac{1}{2}$ cents at Philadelphia, $3\frac{1}{2}$ cents at Jersey City, and one-half cent at Boston. The complaint alleged that the through rates

were unreasonable in themselves, and relatively unreasonable and wrongfully discriminating as compared with the rates from Norfolk to Northern points, and in violation of the act to regulate commerce. After carefully considering the relation between the through rate and the sum of the locals and as well also the pro rata rates compared with the locals, the Commission found the following points were raised for consideration:

1. That the through rates from Wilmington are higher than the sum of local rates from Wilmington to Portsmouth or Norfolk, and the joint rate from Portsmouth or Norfolk to Philadelphia, Jersey City or Boston.
2. That the Atlantic Coast Line and Seaboard Air Line have put in an 8-cent rate or proportion from Wilmington to Pinners Point or Portsmouth on shipments to New York City, but charge a higher rate or proportional of 10 cents on shipments to Jersey City and Philadelphia, both shorter distance points, and also to Boston.
3. That the Atlantic Coast Line reduced its rates on lumber to Pinners Point from points north of Wilmington, including Castle Hayne, which is about 8 miles from that seaport city, but made no reduction in the rate from Wilmington.

This was the first case before the Commission wherein the through rate charged over connecting roads exceeded the combination of charges applied to and from intermediate points on the through line. Some passenger cases had been brought to the attention of the Commission, but no other freight case seems to have been officially brought to their attention. Referring to the custom of carriers, the Commission said:

Carriers in various sections of the country have, whether legally or illegally has never been authoritatively determined, fallen into a custom of making local and proportional rates between the same points, the local rate applying on freight intended to be actually delivered, and the proportional upon freight consigned from some distant point of shipment or to some more distant destination, but in no previous case submitted to the Commission for decision, has the proportional been higher than the local. The practice of making such proportional rates has been mainly defended upon the grounds that it constitutes in reality a share of a through rate on through traffic, which is carried at less expense to the carrier than that entailed in local service, and that commercial conditions necessitate the carriage of through traffic at rates less in the aggregate than the sum of local charges. A proportional *higher* than the local or straight rate between the same points disregards both of these fundamental considerations. As the findings show, there is no suggestion that transporting Wilmington lumber from Pinners Point or Portsmouth is in any respect more expensive to the carriers north of those points than transporting lumber shipped from Norfolk, Port Norfolk or Portsmouth.

Opinion of the Commission

Applying the circumstances of the case to the statute then in force, the Commission found that the rates were in violation of Section 3; that is, that undue or unreasonable preference or advantage had been given to particular persons or particular descriptions of traffic.

The Commission also said: "We think they violate the first section"; that is to say, the rates violated the statute in that the through charges were unjust and unreasonable. Continuing, the Commission said:

We are also of the opinion that in charging a through

rate which exceeds the sum of locals by reason of the fact that the proportion from Portsmouth north exceeds the local from that point, these carriers violate the second section. A carload of lumber, shipped north from Wilmington, is carried by the Seaboard Company to Portsmouth, and there delivered to the line leading north. That line exacts from the Wilmington dealer a greater charge than would be imposed if the lumber originated at Portsmouth or Norfolk for the reason that it comes from Wilmington. The circumstances and conditions applying on the transportation from Portsmouth, Norfolk or vicinity are substantially similar whether the lumber originates there or at Wilmington, or if any difference exists it is in favor of the through Wilmington business. Such higher charge on the Wilmington traffic is clearly against the rule of the Wight case (*Wight v. United States* 167 U. S. 512, 42 L. Ed. 258), which lays down the principle that competitive conditions cannot excuse the imposition of a greater charge for like service under the second section.

No order was issued in this case, but action was suspended for twenty days, in the hope, no doubt, that the carriers south of Norfolk would, by supplemental answers, complete the facts and circumstances, and that the carriers north of Norfolk would proceed to make changes in their rates according to the opinion. Supplemental answers were filed by the carriers south of Norfolk, but no order appears ever to have been issued in this case.

Provisions of the Elkins Law

Since the decision in this case the Elkins law has been passed and as well amended. By the first section of that law, in force from February 19, 1903, to August 28, 1906 (the same language is reproduced in the law now in force), it was provided that:

Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

The same section further provides that:

It shall be unlawful for any person, persons or corporations * * * to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier, subject to said Act to regulate commerce and the Acts amendatory thereto, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariff published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced.

The punishment for receiving "any such rebate, concession or discrimination" is a fine of not less than \$1,000 nor more than \$20,000, but if the offender be an individual, he is liable in addition to imprisonment in the penitentiary for a term not exceeding two years.

The courts in construing the Elkins law, and particularly its language relating to "any device whatever," have given it a very broad interpretation. Generally speaking, it can safely be said that any act by the shipper or carrier by which rebates, concessions or

discriminations are produced, subject the party to the pains and penalties of the statute.

As it is clearly unlawful to attempt to use the sum of two rates, one being an interstate rate (conclusively deemed to be the legal rate when filed and published), the other an intrastate rate which bears the seal of a State railroad commission, there seems to be no question of doubt that the use of the sum of two interstate rates, both filed and published and conclusively deemed to be the legal rates, would constitute too thin a veil by which the user of transportation facilities can secure an advantage over his competitor either at point of origin or destination. To be upon the safe side and keep himself beyond the pale of the law, it behooves the shipper to make his contracts upon the basis of the published tariffs and not attempt in any way to evade the charges prescribed. If the through rate is unreasonably high, it is his duty to file a formal complaint with the Commission; if the sum of the locals indicates in any way the unreasonableness of the through rate the burden of proof is, by the ruling of the Commission, thrown upon the carrier.

As at the present time the mills of justice are grinding much and grinding fine, prudent users of transportation facilities will neither attempt by subterfuges, devices, false billing, factitious billing or other means to get an advantage over their competitors or defeat the published rates of the carrier.

INTERESTING CORRESPONDENCE

The following letters are self-explanatory and interesting:

ILLINOIS MANUFACTURERS' ASSOCIATION,
CHICAGO, September 25, 1906.

Hon. Martin A. Knapp, Chairman, Interstate Commerce Commission, Washington, D. C.:

DEAR SIR—Believing that the Hepburn Law was enacted to prevent discrimination, both between parties and localities, and intended to promote publicity and to assist in the equitable exchange of commodities, this Association called a convention of trained, practical, industrial traffic men to consider the law and make further recommendations which, in their judgment, would assist in furthering the above objects.

This convention adopted a series of resolutions bearing upon these practical propositions, and appointed a committee to lay them before your honorable body, which it did, appearing in Washington on August 28.

An important resolution presented was one bearing on the question of which is the proper legal rate, provided a higher through rate is published and filed and also two equally legal rates, which applying to and from some intermediate point, added together make less than the through published rate. It advocated your ruling that in such an event, the sum of the locals should be the legal rate rather than the higher through published rate, which bears on its face the stamp of illegality, because such higher rate is a discrimination and is unjust on the face of it.

We are sorry to note that Commissioner Clement, in a letter dated September 10, addressed to Mr. J. J. Foley, practically rules to the contrary, although he states that there is no objection to a shipment being consigned to an intermediate point and reconsigned and rebilled from there to final destination, thus forcing the application of the lower rate. This ruling makes it possible to have two legal rates in effect at one time.

We desire to protest to your honorable body against such a ruling, as it opens the door to the greatest discrimination, to the greatest inequality, to the greatest injustice which can be perpetrated upon the shippers of this country and is as unfair to the carrier as it is to the public.

The Commission in the Hilton Lumber Company case, in April, 1901, decided that where the business was moving under substantially similar conditions, the higher through rate was illegal and discriminatory to the extent that it was higher than the sum of the locals, and therefore in violation of Sections 1, 2 and 3 of the act. Such ruling was eminently fair and following the intent of the law, and while it is true that some combinations of rates made on dissimilar conditions might not apply to this category, still the great bulk of such rates are made under substantially similar conditions, and we respectfully submit that the ruling of April, 1901, should be the rule for the future, as in the past.

We believe that the framers of the law never contemplated the possibility of a through higher rate being in effect, as against this sum of lower locals; otherwise the law would have been more explicit on this point.

As a matter of fact, there are many thousands of such combinations, all over the country, perhaps hundreds of thousands, and the only reason that they have never been brought to your attention is that every since railways have been operated they have protected the sum of the locals, when found lower than the higher through rates. In fact, this has been so general that it might be called the common law of transportation.

It seems hardly necessary to point out to you how this ruling will cost the public millions of dollars annually, as it means a substantial increase of rates all over the country, and further, will enable the carriers, if they so elect, to tear down established communities and to build up others at their will, and to drive business concerns to the wall, owing to their inability to compete with more favorably located competitors, who, because of their location, will be enabled to use the sums of locals and thus secure business from their competitors located at the more unfavorable point.

It will also force the public to utilize routes which have no through rates, to force the combination of sums of locals, thus taking away legitimate earnings from the long-haul carriers, and while the carriers may be willing, where they find such combinations, to publish through rates, making them equal to the sum of locals, still, with the gap of thirty days which the law requires a rate to be published to make it legal, there will always be a certain amount of business which will have to move prior to that date, at the higher rate.

A large amount of the carload traffic of this country moves on commodity rates and not class rates. These commodity rates are put in effect where there is business moving, and to charge a class rate several times higher than the sum of legitimate commodity locals which the carriers, in most instances, would be willing to publish if time permitted, but which the business cannot wait for, seems a travesty on equity and justice, which we feel no law was ever intended to sanction.

There is no single phase of the present Hepburn Law which is creating so much trouble, financial loss and dissatisfaction as this, and we therefore respectfully request that this matter be given your serious consideration.

JOHN M. GLENN, Secretary.

INTERSTATE COMMERCE COMMISSION.

WASHINGTON, October 17, 1906.

Mr. John M. Glenn, Secretary, Illinois Manufacturers' Association, 528 Marquette Building, Chicago, Ill.:

DEAR SIR—In reply to yours of the 6th inst., answer to which has been delayed by the great volume of our correspondence at this time, I write to say:

The Commission holds as a matter of law that where two or more connecting lines unite in establishing a through route

and joint rate, such joint rate becomes the only lawful rate for through transportation, whether it be less or more than the sum of the local rates. This must be so, we think, as otherwise there would be two lawful rates on the same article between the same point, which the law certainly does not contemplate. Indeed, if there are two lawful rates the carrier would have the right to discriminate between shippers by giving one the lower and charging the other the higher rate.

We were, however, aware that to a very great extent railroads had accorded to shippers the lower combination of locals, particularly to shippers who were aware that the joint rate was higher than the sum of the locals. Accordingly we have made a general ruling under which any joint rate which is higher than the sum of the locals by the same or by another route may be reduced on one day's notice to the basis of the lower combination. This permits the carriers to immediately reduce all higher joint rates to the combination of locals by any established route. The result will be, if the carriers take the action thus authorized, that all shippers will hereafter get the benefit of lower combinations instead of limiting that benefit to the large shippers who were better informed.

In a word, there is no intention on the part of the Commission to give any construction to this law which will operate to advance transportation charges. On the contrary, by the rulings we have made, the opportunity is afforded to make all proper reductions and treat all shippers alike.

Yours very truly,

MARTIN A. KNAPP, Chairman.

ILLINOIS MANUFACTURERS' ASSOCIATION.

CHICAGO, October 26, 1906.

Mr. Martin A. Knapp, Chairman, Interstate Commerce Commission, Washington, D. C.:

DEAR SIR—Yours of October 17, in reply to mine of the 6th, on the subject of legality of sums of locals, is duly received and carefully noted.

We have no doubt that the Commission has made this ruling on what you believe to be the law, and for the best interests of all concerned, but we are constrained to think that that interpretation is wrong and that the result of the ruling is to create the conditions which you had in mind to prevent. Our reading of the law is that any tariff which produces discrimination is unlawful; therefore, a higher through rate than the sum of legitimate locals is unlawful because it is discriminatory in the plainest sense of the word. Up to now, the railways have always recognized the legality of the sums of locals, and every shipper, great or small, has been given the advantage of the same, while under this ruling railways will naturally only quote the higher through rate to those not well equipped with traffic men to handle their business, while the latter, out of their superior knowledge, knowing the facts, will handle their business so as to force the sums of locals, thus giving the greater industries an advantage over their smaller competitors.

The ability to use a rate between two given points by forcing movement through a junction where there is no through rate or by reconsigning at that junction, to all intents and purposes, creates a second tariff rate equally as legal as a higher through rate, and therefore, under your ruling, it becomes entirely possible to have two legal rates at one time, which is what your honorable body has sought to prevent. The ruling to permit tariffs to be issued on one day's notice to meet such conditions, we recognize as an effort on your part to prevent discrimination and the necessity of having two legal rates in effect at one time. There is this difference, however, that while this privilege is granted to the carriers, should they so desire, it is not mandatory, and generally the carriers will probably not so desire, as it operates to reduce their revenue.

The conditions prevailing between the territory east of

Chicago and the interior of the State of Illinois is a good illustration of practical conditions as they now exist. Eastern railways have been checking for some time to ascertain where combinations of locals are less than the through rates, and have found thousands of these combinations. The Eastern lines are prepared and willing to publish through tariffs on the basis of the sums of locals, but the Western roads are not prepared to concur because of difference of opinion between the carriers as to what divisions should prevail on the new tariffs. In the meantime, the public is paying the bills at higher rates, or the business is being forced through on reconsignment, which necessarily involves considerable work, and also a delay to the movement of the car and its lading, which under present traffic conditions and shortage of equipment, is working great hardship on all, as the loss of the use of a car for a day, through being held for reconsignment, is a public loss.

This Association is standing for the welfare and best interests of the majority of the manufacturing interests of this, the third greatest manufacturing State in the Union. We cannot see these great interests suffer financial loss, without again calling your attention to this matter, and therefore feel that if your construction of the law stands, the evils resulting therefrom will be very great.

Yours truly,

JOHN M. GLENN, Secretary.

The following letter addressed to the Editor of **FREIGHT** presents another view of the same subject:

Because we would like to see a publication of the power of yours in the right light will suggest that you might inquire of your legal department:

1. If it is not the province of the Interstate Commerce Commission to prevent discrimination?

2. If the local rates from A to B and B to C make less than the published through rate, is it not within the province of the Interstate Commerce Commission to rule that it gives persons, corporations, etc., at B an advantage over those at either A or C, therefore is it not illegal?

We notice on the last page of the reply of your Legal Department to the Western Stoneware Company the following language:

"If, in any instance, the sum of the locals is less than the through rate, the locals will be advanced. If, on the contrary, the sum of the locals exceeds the through rate, the through rate will be advanced."

DEATH OF HERBERT BRADLEY

The tragic fate of Herbert Bradley, who was gored to death by a stag at his home in Montclair, N. J., was a deep shock to thousands of business men throughout the United States who admired and esteemed him. He was thoroughly informed upon all phases of transportation questions, and handled this department of the National Millers' Federation for some years.

Modern Miller pays this tribute to him:

"For twenty years Mr. Bradley was at work gathering knowledge under exceptionable facilities. He knew every port in Europe and America in detail. He knew personally practically all of the prominent millers in America and the importers abroad. His acquaintance with steamship people and railroad traffic officials was extensive, and they knew him with no passing acquaintance. Transportation circles had a full knowledge of his influence. He stood as a rock between the carriers and the millers, and the reliance placed in him is only too well known and too fully appreciated in the sense of loss the trade now feels.

This may be a lawyer's idea of the railroad business, but it is not in accordance with the custom which we understand is more or less good law. The subject of local rates is one made, after being fully considered, to secure for the carrier all the revenue the traffic will bear, or all the revenue that competition will permit the line to charge. Again, where it is stated: "The sum of the local exceeds the through rate the through rate will be advanced," will say, that is entirely superfluous. It will be found by the most casual investigation that through rates are always less than the combination of the regular local rates, although in some instances the through rate is made of the combination of two local rates. The history of the rate formation will show that not a single tariff was ever made on a higher basis than the combination of regularly established rates. This has been so universal that the railroads have prior to the time they made catspaws of the I. C. C., voluntarily applied the sums of the locals as maximum, which, however, is in nearly all cases only on commodities.

As stated, the through rates are usually less than the class rates, and we believe we are not overstating it when we say that there is not a so called through tariff in existence that is higher than the combination of the local rates. Therefore, just why the railroads sought to evade the application of their own custom by evading or getting the Commission to permit them to evade the publication of the sums of local commodity rates as their through rate is chargeable to the fact that some facetious lawyer who was onto his job may have thought it would be an excellent joke on the Commission to get them to make such a ruling.

We do not make this as a charge and are not disrespectful to the Commission, and we hope not to any one else, but having been in the traffic department of railroads and having talked to innumerable traffic men on this matter, who all admit that nothing but the sums of the locals can be maximums, no matter what the Commission does, and that unless the railroads voluntarily publish the combination of local rates as a maximum rate, there will be discrimination.

We are, yours respectfully,

A. B.

Further inquiries and the replies thereto will be found in the Bureau of Complaints, Grievances and Inquiries in this issue.

"His knowledge of rights and liabilities of carriers, his intelligent conception of the obligations resting on the shippers, his firm adherence to equity, his determination to stand by what he conceived to be right, are all qualities which we think the trade will recognize Mr. Bradley possessed. No man possessed of energy can go through business life without conflict. During his connection with the Federation he has opposed many transportation officials. His initiative in transportation reforms at times nettled the steamship people and vexed the railroads. His policies frequently brought him in conflict with shippers. His business created opposition among competitors. But all whom he opposed will bear witness that he always spoke the truth and played fairly."

The FREIGHT CLAIM INDEX AND RECORD, by W. R. Campbell, published by the **FREIGHT PUBLISHING COMPANY, No. 116 Nassau Street, New York, will be found indispensable to every shipper after it is once placed in use. Price \$5.**

Relationship of Railroads to the People

BY SAMUEL SPENCER

PRESIDENT OF THE SOUTHERN RAILWAY COMPANY

(An address delivered at Montgomery, Ala., October 25, 1906.)

I WELCOME this opportunity to address the producing and shipping interests of the State of Alabama. Born and reared in the South, and identified by my life's work with Southern interests, I feel that I have a right to speak to you as one of your own people. In the spirit of that relationship, and with an earnest purpose to assist in bringing to a better understanding the shipping and transportation interests of our section and country, I have come, at the invitation of the President of the Alabama Agricultural Association, to address you today on "The Relationship of the Railroads to the People."

When this invitation first reached me, I hesitated as to the wisdom of my attempting to say anything on this question at the present time. Periods of acute political excitement are not congenial to the just and reasonable settlement of economic and business problems of a public nature. Involving as they do the commercial safety and prosperity of the country, they should be considered only in a spirit of calm and broad conservatism, and not be determined amid the excitements, misrepresentations and disturbing influences of the political hustings, and the determination should be founded in justice and fairness, and not upon apprehension or impulse.

The American people have recently been passing through a period of intense political agitation and excitement in respect of industrial and commercial conditions. Laying aside the issues which have divided parties for half a century, the public thought and interests have been concentrated on economic agitations. Everything relating to the business interests of the people has been drawn into the arena of excited popular sentiment and debate. The honesty of fiduciary relationships, the accountability of men of great power and great wealth to their fellow men, the regulation and control of so-called trusts, and of quasi public utilities, have received the focused attention and excited the universal interest of the people. Under the influence of their aroused and determined purpose, some gross abuses have been uncovered. Prompted by these disclosures, it is little to be wondered at that the popular judgment has become disturbed, and the conclusion hastily and unjustly reached that all important interests merit popular suspicion and distrust. Realization of the extent and power of the sentiment thus created caused me to doubt whether at this juncture it was wise for me to enter upon a discussion of any question within the range of the existing popular excitement.

Impressed, however, by the fact that this is a gathering of the substantial producing and shipping interests of this State, and wishing to come into closer touch with our patrons and the public on whose approval and good will the interests I represent are so largely dependent, and earnestly desiring at all times to aid, if possible, in a just solution of the momentous problem, I have put aside my doubts and am here in obedience to the request of your president.

The Railroad Manager

The railroad manager's position—his relationship to the public, on the one hand, and to the properties he represents and for the successful management of which he is responsible, on the other—has undergone radical changes in recent years. A half century ago the need of the people and their consequent demand was for the development of the country through the establishment of transportation facilities. Possessed of the virgin and untouched wealth of a continent, rich in its forests, its mineral resources and its agricultural possibilities, the

need of a market was the pressing and imperative necessity of the people. To meet this necessity private enterprise was not simply invited, but was urged, to establish the needed transportation facilities. Public sentiment did not merely justify, but, with practical unanimity, demanded the granting not only of charters to railroad companies, but governmental financial aid and encouragement as well. It must be borne in mind that such inducements were at that time needed, for in the uncertainty attending these experimental enterprises private capital was reluctant to embark in them.

Alabama was no exception to this rule of governmental encouragement. Its general statutes and the charters granted by its General Assembly in response to the sentiments of its people, make a history of public aid and encouragement to the building of railroads, and contain no hint of antagonistic public sentiment or of an ultimate purpose of severe or drastic public control or injury.

Under these circumstances, these undertakings, so favored by the State, were, with reason, regarded as private enterprises especially favored by public policy—private enterprises established to provide for a public necessity, it is true, but still private enterprises with right of private control, limited only by the adequate provisions of the common law.

But notwithstanding the public and governmental favor thus extended—notwithstanding the substantial freedom from governmental interference in their management—there were very few railroad enterprises in the South which could at first maintain themselves. The history of many of them was a history of bankruptcy and disaster until the weak and disjointed properties were amalgamated so as to afford continuous transportation, and open the markets of the world to Southern products in competition with those of the other sections and of other countries.

Regulation of Power

With that amalgamation of properties and its consequent public good, came great power—exaggerated perhaps in the public mind—but still great power, over the interests of commodities, localities and persons, and with it a demand for public regulation. It must be admitted that this demand, within just and reasonable limits, is based on sound reason. There must be some adequate remedy for the misuse of power affecting great public interests, but important as is the creation of the remedy, no less important are its just and reasonable and wholesome limitations. In the progress of time, the public aspect of this question has become entirely reversed. The pendulum has swung from an extreme on the one side to an extreme on the other. As, in the inception of railroad construction, the public relations of the properties were largely lost sight of, so now, in reaction, the public charter of the enterprises is almost the only thing recognized or considered, and the private rights of the owners are, in the political thought of the day, almost if not entirely forgotten.

Justice, however, lies between the two extremes. These properties and their owners should be required to perform faithfully their public duties under reasonable rates and practices, under full publicity without unjust discrimination and without favor for any interests. When this obligation is performed, the residuum is private property entitled to the same consideration and protection at the hands of the public and of the Government as all other private property. In

the formation of public policies common justice requires us to remember that, when these properties were originally created, it was done in reliance on the good faith of that reasonable public countenance and support under which the public powers were granted and the private investments were made.

Confronted by this evolution—or, rather, by this revolution—of conditions, with the administration of a property of a dual nature, invested in as a private concern, but charged with important public duties, the difficulties of the railroad manager become apparent. On the one hand is his imperative obligation to the public to provide for it proper facilities, to do so at reasonable rates, to avoid all unjust discriminations as between commodities or persons or localities, and to do equal and exact justice as between his patrons. On the other hand to perform these duties he is still dependent upon investors—the men who can and will furnish the money essential to the constant creation of those additional facilities which are necessary to accommodate the growing traffic of the country. There is no legal obligation on any one to invest his money in railways or in any other properties. The action of the investor must be voluntary, and inducements of a safe and businesslike nature must be presented in order to render the investment attractive. The railroad manager must provide the transportation facilities which the business of the public demands. To accomplish this he must have the necessary money, and, to obtain it, must show successful results in the operation of the property—results which will convince the investor that his investment will be safe and remunerative.

Railroads Are Borrowers

Few, if any, railroad companies have an earning capacity sufficient to provide for needed betterments, improvements and additions. All of them are large borrowers. This is especially true at this time of the railroads of the South. Originally constructed under great difficulties and with inadequate means, traversing a country the traffic requirements of which were at the time small, located in a section practically without large capital of its own, and, by the results of the Civil War and the difference in political conditions, separated for a long period from the sympathies and confidence of investors in other sections, these railroad properties of the South were peculiarly in need of an outside credit as a basis for additional capital to bring them up to modern standards and to provide the additional facilities absolutely essential to accommodate the growing traffic of this section. The problem of the Southern railroad manager, then, was to break down sectional and financial prejudice and by conservative and wise management to demonstrate the inherent value of the properties under his care, to commend them to the confidence and support of the capitalists of other sections and thus create a credit to which he could appeal for the means necessary to meet the demands of the traffic. For many years this was a difficult and discouraging task. Investors in Southern railroad properties had been alienated by their enormous financial losses, and a restoration of confidence was neither easy nor prompt.

You are all too familiar with the wholesale bankruptcy and financial struggles, and the consequently impoverished condition of the railways of the South during the 80's and the early 90's for it to be necessary to do more than to recall them to your memories. Happily the difficulties of that particular period and of those special conditions have measurably passed away. The South has entered upon a period of increased production in agriculture and in manufactures of general industrial and commercial activity such as her best friends and most enthusiastic prophets had scarcely dreamed of fifteen years ago. Within that period the cash value of her cotton crop has doubled, the amount of pig iron produced at her furnaces

has increased enormously, and the product of her coal mines has increased more than threefold. Cotton factories have sprung up within her borders to the extent that more of her cotton crop is now manufactured on her own soil than in all the mills of New England. The total value of her annual manufactures now aggregates nearly eighteen hundred millions in value. The total value of her agricultural products is now over seventeen hundred millions per annum. Her railroads are no longer weak, disjointed lines, but have been amalgamated into several large, strong, continuous systems, so located and so equipped as to serve advantageously the demands of her growing industry and commerce.

Transportation and Business

This great difference in the condition of her main arteries of transportation has been greatly influenced, of course, by the increased business activity and industry of the country, but toward that great prosperity and increase of wealth and industry which the South is now enjoying these great agencies have contributed in a most substantial way. In fact, but for the great improvement in their condition, both physical and financial, the present rapid growth of the South in industry and wealth would have been impossible.

Fundamentally the basis of this improved condition of the railway properties is financial credit. With a few minor exceptions substantially all of the enormous improvements to these properties and their equipments, costing hundreds of millions of dollars, in the last decade have been made with borrowed money. The basis of the credit on which the money was borrowed was the increased confidence of the investing public in the substantial growth and the future prosperity of the South, and in the gradually increasing earnings of her railway properties.

The most pressing problem with every railway property and every railway manager of the South today is that of providing additional facilities for the safe, prompt and satisfactory movement of the constantly growing traffic. This has been the case for nearly ten years, but the problem is more pressing today than at any previous time.

While it cannot in justice be claimed that the railways have at all times done all that was required by the public, nevertheless, bearing in mind the enormous and sudden growth in Southern products and Southern commerce for the last ten years, and remembering the conditions of the railway properties at the beginning of that period, the fact that the products of so marvelous a development have on the whole been successfully moved to market challenges the attentive consideration of those who impartially study the railway problem.

Let us look for a moment at the conditions under which this task has been and must still be performed.

In a country so wide in extent and with a commerce so vast it is no longer possible to do the transportation service of the public by individual enterprises or even by small corporations. Large corporations and large aggregations of capital are essential.

This fact and the shortcomings necessarily incident to hurried preparations, and overtaxed facilities, have largely deprived these carriers of popular sympathy, and subjected them to easy misrepresentations and to popular misunderstanding. The outward expression of size and power has impressed the popular mind with the idea that they possess untold wealth and limitless resources. It made them the easy mark of the political agitator. The result has been that there has crept into the public mind a different standard of justice for them from that which governs the property rights of every individual property holder in the land. Statutes have been enacted establishing principles of liability of a railroad company which do not apply in the case of the farmer, the mill owner or the employer in any other department of industry. Juries have come to think it right to award verdicts for larger damages against railroad corporations than against individual litigants.

With the increased prosperity of the country have come—and properly—higher wages and also higher prices for everything the carrier must buy. Instead of \$9 per thousand feet for bridge and shop lumber in 1896, the cost is now \$16 to \$20 or more; instead of \$18 per ton for steel rails, the cost is now from \$28 to \$29; instead of \$11,000 each for locomotives, the cost is now from \$16,000 to \$20,000; instead of \$475 for box cars, the cost is now \$800, and so on throughout the long list of necessary railroad purchases.

Price of Labor Increased

I need not call your attention to the increase in the price of labor. It applies to every industry, and the railways are not only not exempt, but they suffer the great disadvantage not shared by others that increased prosperity of the country and activity in business does not bring to them increased prices for the only article they have for sale—transportation.

The farmer, the manufacturer, the merchant, when paying higher wages or higher prices for raw material, obtains, as a rule, a higher price for his products.

Not so with the carrier. He must, under stress of market competition and the inexorable decree of public sentiment, keep the prices for his product—transportation—at the same or at lower figures.

Increased taxes have also added substantial burdens to the carriers, the taxes on the Southern Railway Company, for example, per mile of road having increased since 1898, more than 40 per cent.

Coupled with these increased expenses, there has been a constant reduction in rates, and today the percentage contributed by transportation rates to the cost of whatever the people consume is much smaller than ever before in history, and smaller in America than in any other country of the world. And yet the loudest cry that is heard today from the public voice, and the most persistent demand from every quarter, is for an enforced reduction in railway charges.

Without dwelling upon this complex and perplexing question of rates, it is pertinent to ask you to consider, as reasonable and intelligent business men, how these conditions affect the ability of the railroad manager to meet successfully the high and increasing obligations on him to provide adequate facilities for the commerce of the country. With an increase in the price of everything the carrier must buy—with an increase in the cost of labor, of materials, in the verdicts of juries in damage suits, in taxes—and with decreasing rates, a point must ultimately be reached where the carrier's capacity to meet the public demand for increased facilities must be substantially impaired, if not destroyed. It must be apparent that if there is a continual increase in the units of expenses, with a continual decrease in the units of revenue, the financial strength of the enterprise cannot survive indefinitely. If the progress is carried far enough, more increase in volume of traffic which has sustained the carriers thus far will not suffice, and without financial strength and credit the carrier cannot adequately meet the proper requirements of the public.

Justice of the People

Nothing will avert the public calamity of such conditions except the ultimate conservatism and sense of justice of the American people, and in that ultimate and saving conservatism I still have faith. When their attention is seriously and earnestly directed to the real problem, their conclusion will not only be wise, but will result in the establishment of just and righteous standards for the ascertainment and protection of corporate as well as individual rights. They will appreciate the fact that the highest service a railroad manager can render to the section he undertakes to serve is, while properly performing his public duties, to establish the credit of his company on a firm and enduring basis. In no other way can he give so certain an assurance—in no other way can he give

any assurance—to the people of his ability to meet the demands and advance the interests of their expanding commerce.

The use of this credit is chiefly in the form of the sale of mortgage bonds, although there are a few companies whose earnings are such that capital stock can be sold to raise funds for needed improvement and equipment. To those whose commercial success has not attained this fortunate position there is no recourse but to mortgage the property.

There is no farmer or manufacturer in the South who does not know the business danger of a mortgage upon property. Happily the distress which has come to many of them in former years from this source is now largely a memory only, but nevertheless a memory which must long be vivid, of anxiety and struggle and privation to meet pressing obligations and avoid total loss of property.

A mortgage upon a farm or a factory or a dwelling does not differ in principle from a mortgage upon a railway, and the owner of neither incurs such a burden except from necessity.

The farmer may frequently avoid such necessity by foregoing the benefits or possible profits of the enlargements or improvements which he desires to make.

The improvements to the railway are required not solely for the profit or benefit of the owners of the property, but are almost always rendered necessary by the demands of the public for proper service at the hands of its quasi-servant, the common carrier. The railway owner or officer has little choice or option as to whether such improvement shall be made, when the pressure for additional facilities is great as it now is in the South.

Mortgages and Improvements

And yet, with this irresistible pressure upon us, the public mind has been so warped, or the subject has been so little studied or understood by some who attempt to discuss it, that the issue of such mortgages solely for such purposes has been seriously condemned as a stock-jobbing, stock-watering process, adopted for private gain, and to extort additional interest charges from the public.

The fact is, every dollar of the proceeds of such mortgage bonds issued by the railways of the South must be spent for improvements upon Southern property, for the necessary and better accommodation of Southern traffic and development, by far the greater part going directly to pay Southern labor for permanent and immovable structures upon Southern soil.

Ought the creation of such mortgages or the sale of stock for such purposes to call for public condemnation? Does it not rather merit not only public approval, but public support, since it has its fundamental purpose in the requirements of the public service from which the owners of the railway properties cannot properly shrink?

The underlying basis of all credit of business enterprises is business success. The sole source of such success in railway operation is earning power from the transportation of passengers and freight.

The rates obtained for the service rendered are therefore the vital consideration upon which the ultimate success of the enterprise must depend.

Time does not admit of a full discussion of this subject now, but some of the erroneous impressions which have found lodgment in the public mind in respect to it deserve especial notice. Unfortunately this question of rates has gotten into the very vortex of acute political agitation. It has been seized upon by many who seek political office as a means of securing popular favor. In the public mind it has thus become, to a large extent, a political question, and not one to be decided on economic principles or controlled by commercial laws.

With industrious effort the impression has been made that the carrier is subject to no restraint in the making of rates, except such as is imposed by statute law, and that it can and does act arbitrarily in fixing the charges for the

service which it renders. Nothing could be further from the truth.

The steady decline of rates, ever since railways were inaugurated, while their power and financial strength have increased, is of itself alone a significant if not a convincing fact.

While much of this steady decline has undoubtedly been due to competition, and to other causes beyond the control of the carriers, a much greater portion has been due to their voluntary and wise efforts to foster new traffic and encourage the development of new territory and new industries, and to widen the markets for the products originating upon their respective lines.

Rail Rates in Alabama

The rates charged upon pig iron from Alabama's great iron center were never the rates which the railways could arbitrarily fix. They, of sheer necessity, were the rates which would enable the ironmaster at Birmingham to market his product in the Northern States, in competition with those of Pittsburgh and Chicago, situated in the very heart of the consuming territory, and in Europe in competition with the furnaces of England and Germany, with their cheaper labor and their closer proximity to the purchaser.

Without such rates, fixed as they were and are by competition of markets, Birmingham could never have successfully lighted her furnaces.

The cotton mill industries of the South, which now represent an investment of nearly \$250,000,000 and whose products find a market not only in every State of the Union, but in Europe and the Orient, could not have been developed and become prosperous as they have if the transportation rates for those products had been arbitrarily made, even on the same relative basis as those still charged in New England and in England upon exactly the same articles.

The much greater distance of the Southern mills from the large consuming markets had to be overcome and it was overcome largely by relatively lower rates of transportation.

These are two illustrations which you will recognize at once.

The same principle applies in thousands of others, and the result for the entire country is a scale of railway charges which has challenged the attention of students of economics the world over as being the lowest in existence.

By many the fear is honestly entertained that the question of rates is controlled by the capitalization of the carrier. If this were true, it would follow that a company with a large capitalization would charge high rates, while a company with a small capitalization might charge low rates. The fact is that the rates of all carriers serving the same or competitive sections are, and of necessity must be, in practical accord, for otherwise the company with the lowest rates, if it could escape bankruptcy, would soon absorb all traffic and drive the others out of business.

Capitalization can have no practical effect upon the rates charged in this country.

Almost all rates are the result of active and current commercial conditions, arising long after the capitalization of the carrier has been fixed, and which are subject to wide fluctuations, while capitalization often remains unaltered.

Adjustment of Rates

Theories have been propounded from many sources, high and low, for the adjustment of rates on a basis of allowing the carrier to earn a fair interest upon the cash investment or upon a fairly ascertained value of the property. Such theories seem fair and equitable and plausible until they are examined. Possibly they might be applied to a single railway enjoying a monopoly and serving a section with those of any other. When applied to the vast railway system of this country, comprising 220,000 miles of railway and serv-

ing thousands of commercial and industrial centers, each struggling to widen the distribution of its products, such a method of adjustment becomes utterly impracticable. Conceive a simple case at your own doors. Montgomery has three lines of railway to the sea coast at Savannah. You all know that the rates by all must be the same. Is it supposable for an instant that the cost of these several lines was the same, or that their value is the same today?

If the rates of transportation should be adjusted by some arbitrary power, so that each should earn only a certain interest upon its cost or ascertained value, would not those rates be different from each other? If they were different, could the line having the higher rate secure any traffic?

If it secured no traffic, what would become of the arbitrary dictum that it should earn the interest on its cost or value?

Again, the question of skill and prudence in management must be considered.

If rates, which between competitors must always be equal, are to be arbitrarily adjusted so as to afford a fair interest upon the value of poorly managed properties, then the same rates will yield to the well managed property a higher rate of interest.

The power which arbitrarily fixes rates upon such a basis, whether it be the Government or any other, must then undertake to decide which is the well managed and which the poorly managed property.

This is a single and very simple illustration as to three lines from Montgomery to Savannah, assuming that no other lines existed anywhere in the United States.

From this it is easy to form some conception of the complexity of the problem of applying such a method of rate adjustment to all the network of lines in the country, or even in your own State.

Problems to Be Solved

I feel that I have already detained you too long. My excuse must be my deep and abiding interest in having you understand some of the difficulties which surround a railroad manager in the performance of a duty which in many respects has become a public trust. Each patron of his road can, in the nature of things, only get a partial view of the situation. He is apt to see only the things which affect his own locality, or his own business. When the schedule of passenger trains does not happen to be the most convenient for his particular station, when there is a temporary deficiency of freight equipment for his business, when there is an unaccounted for delay to his shipment, when there is some inadequacy of depot accommodations or facilities near his home, he sees it and finds it difficult to understand why it is permitted. The railroad manager, on the other hand, is in an entirely different situation. Forced, by the obligations of his position, to consider the needs of a larger territory embracing a wide diversity of interests, with the obligation to reconcile as far as possible the conflicting claims of persons and of localities, he must take large and comprehensive views of his public duties and obligations. His obligation is to utilize the means at his disposal, which are often limited, so as to do the best, under all the circumstances, for every interest. He would have been more than human if in some instances—if in many instances—he had not failed, and little can be the wonder that those whose attention is confined to their own locality and their own interests have found occasion for irritation and dissatisfaction. It was likewise to be expected that this dissatisfaction would be fomented by those having an interest in creating friction and inflaming the mind of the public against the carrier.

But when the story of the South's progress and prosperity is considered, and the place of commercial supremacy she is rapidly attaining is contemplated, justice, I think, requires the admission that on the whole the work of the railroads

has been well and efficiently done. It is said that railroads have the power to make or mar the fortunes and destinies of localities and sections. If this be true, what is the lesson to be drawn from the great and unprecedented prosperity of the Southern States. Primarily due to the energy, industry and intelligence of the people, it must be admitted that it has not prevented, and in view of its amazing proportions, which are exciting the wonder of the world, it cannot justly be claimed that it has been retarded, by inadequate or inefficient transportation facilities. History is the vindication of all the forces, including the transportation companies, which have been at work to create the new life and prosperity of the South. I appeal from the narrow spirit which condemns because of a few individual grievances and exceptional deficiencies to the larger spirit of justice of the people, which will recognize that the true standard of enlightened judgment must be the fidelity and efficiency with which the service as a whole has been rendered. I do not fear the verdict of a calm and dispassionate public sentiment.

Interests Are Identical

The interests of the railroad and of its patrons are identical. One cannot prosper without the other. The railroad must do justice to the people. The people should do justice to the railroad. Their cordial co-operation in the great field of human industry is essential to the public welfare. They must work together in a spirit of forbearance and mutual consideration and trust, if they are to accomplish the results for which both are striving, and which are within their

grasp if they work together. The man who would sow dissension between them and embarrass their co-operation by misunderstandings, friction and antagonism is a public enemy. While the railroads may be in a sense at his mercy, he should not be tolerated by the people, for the oppression he seeks to bring upon the railroad must reflect itself upon the fortunes of the people long after the disturbing cause has been forgotten. The cardinal point to be appreciated and remembered is that a railroad will destroy itself unless it fosters traffic—unless it adopts such a policy toward its patrons as will encourage and increase permanently the movement of business. On the other hand, the people will be the first and the greatest sufferers if by hostile action they limit the capacity of the railroads to serve them.

Many and great problems confront us as a people at the dawn of this new century. Not the least of them is the relationship which should exist between the railroads and the people. It should be approached in a spirit of justice, forbearance and moderation, and with the purpose of establishing a complete understanding and more cordial sympathy between the people and the managers of these public service utilities. It is universally recognized that, in the American Government, the power of the people is irresistible. Upon moderation and wisdom in its exercise depend the safety of life, liberty and property, and the stability of our national institutions. The effort of the patriot should be to see that its use is tempered by an awakened national conscience and that in every national action the virtues of tolerance, moderation and justice are exhibited.

E. H. Harriman Talks on Various Railroad Topics

E. H. Harriman, in an address at the Commercial Club at Kansas City, Mo., said:

I saw in the papers that President Hill, of the Great Northern, in an address before the commercial bodies of Chicago, said that the country needs 100,000 miles more of railway. I feel sure Mr. Hill was misquoted. Two men now here who heard his speech confirm me in that belief. As they understood it, and as he probably said, the railroads need sidings, terminals and double tracks equal to 100,000 miles of new railways.

In his speech in Harrisburg recently President Roosevelt said that the Executive and legislative departments of the Government should be given additional power to deal with public organizations.

If we are going to continue to prosper, the power which President Roosevelt desires added to the Government, I hope, will be added to the organizations. I hope that some of it will come our way. It is impossible for a railway company or large organization to carry on business properly if the people are constantly criticizing and suspecting. In the Union Pacific Company no one man says what the company will or will not do. I am untiring only because I must be on hand to hear conferences and try to bring a body of men to one conclusion. It is not easy if you always have to turn to the legal department and find whether you may or may not.

It is often important to a city or country whether we do certain things, whether we develop a territory or leave it dormant. Often we cannot give development a start because of the action of certain people for political prestige. I believe there is to be a change of attitude which soon is to be felt. The people are coming to believe in Americansim—and that means fair play.

Secretary Root's Rejoinder

Secretary Root, who happened to be sitting near Mr. Harriman, prefaced his address on Pan-American conditions with this reply to the railroad magnate:

The experience I gained from a knowledge of railroad business in the State of Missouri at a time when the railroads were competing for business led me to believe that the just means of regulating traffic and railway affairs is through the railways themselves. I believe that it is just to say that a wise law would be one that would force the railroads to combine in keeping the law—a law that would prevent the railroads from breaking the law.

I repeat that the best regulation can be brought about by the railroads themselves, if they will only do it. Their power, Mr. Harriman, should be supplemented by Governmental control, such that would prevent them from doing wrong. It is doubtless the case that a railway by special compensation or special rates can hope to build up a bigger and better business. Nevertheless, science of government always gives a chance. The privilege of the railroads in discriminating in the matter of special rates and compensation is too often abused, as we have seen.

It is the common tendency of railroads to give advantage to the wealthy shipper against the weaker or smaller one. It is that tendency so often displayed—a tendency to crush the weak. For this reason I say that it is necessary, it is essential to freedom and independence, that the railroads should be held under control to prevent discrimination. The slight advantage that the railroads would gain by more power—the power that Mr. Harriman asks for—would be so greatly offset by the evil that such a proposition would not be considered for a moment.

Trans-Mississippi Congress Speech

At the Trans-Mississippi Congress Mr. Harriman, speaking extemporaneously, said:

I am going to try to say something to you that will perhaps make you think, and maybe gain some friends among you all, in order that we may co-operate, because I believe that is what we have got to do, all of us. Whether we represent corporate interests or individual interests, whether professional men or business men, we have all got to co-operate if we are

going to succeed in eventually bringing about what we all desire—a community in which all interests will be treated equally and alike.

I, perhaps as much as anybody, represent what the public is believed to be antagonistic to at this time—corporate interests or at least railroad corporations. I have been introduced on several occasions as being the controller of so many miles of railroad more than any other man in this country. That I want to deny. I not only do not control so many thousand miles of railroads, but I do not control one mile of railroad, and as I said last night at the Commercial Club, I do not believe in any one man or any combination of men controlling the important transportation lines of this country, or any great portion of them.

The organizations of which I am part are made up of 14,000 or 15,000 persons who control and own those properties. There is no individual, no combination of individuals that could possibly own or control them or does control them. It is the stockholders and the boards of directors who manage those organizations. While I stand as their representative and appear to be the dictator, I am not such. I simply carry out what has been carefully considered and turned over by many minds.

I have never taken very much interest in your proceedings until I was invited to be with you this year. I have only known in a general way that you have forwarded certain important interests; among others that you were principally the means whereby the irrigation development was commenced, and I think of that one fact you should be proud if you never accomplish anything else.

But last year you passed a resolution which was antagonistic to the then clamor for additional legislation or power to be conferred upon the Interstate Commerce Commission. Am I not right in that?

"I believe so," said Mr. Francis.

Seeks Cooperation

Continuing, Mr. Harriman said:

Your contention was and ours has been all along that the Sherman anti-trust act, the original Interstate Commerce Commission act, the Elkins amendment thereto, gave sufficient power to the Government and to the Commission to prosecute and correct the then existing evils. I do not intend to try to defend the railroads or the officers of the railroads, because I believe that the management of the railroads has been largely due to the antagonistic feeling that has prevailed against them, but we hope, gentlemen, to correct, and as I have said before, to get some co-operation among the intelligent minds of the stable citizens of this country.

What has happened since you passed that resolution a year ago? There has been an act giving almost unlimited power to control all business interests in this country to the Railroad Commission if they choose to exercise it. There are seven of these men; four are a majority. Four men can really control the transportation interests of this country if they choose to exercise their power. What has been done in correcting the evils which existed before? They have proceeded under the laws that existed before the additional power was conferred upon them. They have succeeded. Not only the Commission but the arm of the Government through which the prosecution is conducted, the Attorney General, has proceeded against corporations, railroads and others, and under the power then had, they have succeeded in bringing about a very different condition of affairs, and yet it could have been done without any additional legislation conferring additional power upon an Interstate Commerce Commission or any other body.

I do not pretend to criticize that Commission or any one else. I believe—I am bound to believe—that they acted in good faith when they stated that they could not bring about any different condition without additional power. And I am inclined to think that the conditions which brought them in

contact with the very bodies of men whom they were trying to control gave them information, opened their eyes and let them see the means whereby they could proceed to prosecute the very men whom they were accusing, and have eventually shown to have been conducting their business contrary to the law.

Additional Government Power

Now, we are in a situation where it has been suggested that additional power should be conferred upon the Government. I refer to what I stated last night, the President's speech at Harrisburg, Pa. But before any action is taken that way by conferring additional power on any branch of the Government, it seems to me that we should wait and see what will become of the additional power which has been granted or conferred to this Commission. Perhaps in their proceedings under the old acts and correcting the abuses which existed before they may think it will be unnecessary, and perhaps it will be unnecessary, for them to act under the new law. Let us hope that it will be so. But if they do not act under that law and make a mistake it will create a condition from which this country would not recover in a decade.

They have in their hands the power to regulate and control every business interest, for I contend that the transportation interests are the ones that are most vital to all business interests and all development in this country. Were it not for the means of transportation there could be no development, there could be no communication between these great cities, St. Louis and Kansas City, and other cities and the territory between these places.

Now, then, I think the railroad traffic men have gotten to understand that they are not the ones that have made the rates. I think that up until recently, and perhaps some of them do still, they thought they were the ones that made the rates. But they did not. They only equalized the rates. The rates have been made by the communities which were served by the different railroads. It has been necessary to ship certain commodities from points of production to points of consumption; to ship merchandise to points of distribution.

Rate-making Power

Now, all those common centers have had to be treated alike; they have all had to be put upon the same basis. Therefore the rate making power was a commercial necessity. That is, it was controlled by commercial necessity. That is, you could not disturb the rates, say, at Kansas City, the rates that might prevail from this distributing center to points reached by it, without affecting St. Louis, Chicago, Houston, New Orleans, Memphis and every other distributing center in this country, no matter where it is.

It seems to me, now that that condition of having the rates controlled by commercial necessity has been changed so that they may be controlled by political opportunity. Every aspirant in every community for political favor may be advancing the theory to his constituents that if they will put him in office he will favor the reduction of rates. Now if they succeed in inducing the Commission to reduce the rate or change the rate, whether it is a reduction or advance—unhappily it will be a reduction if at all—in only one of those distributing centers then comes the traffic man's position, he has to equalize all the rest.

Now that may appear to you, gentlemen, as a simple proposition to get the rates down. If you get them down, if you are all treated alike, all treated fairly—and I believe every business man in this country only wants to be treated fairly—the rates will be arranged by the railroads on a declining scale as it has been in the past, but they must get themselves in condition first so that they can carry these commodities at less cost.

In other words, in order to reduce the charge they have got to be able to reduce the cost. We have got to the limit under the present condition and present method of economics

in transportation—almost to the limit. We have as heavy a locomotive as the base upon which it stands will permit. We are hauling as long a train as will hold together. And this limit which we have now reached has been brought about by the indefatigable work of many active minds.

Railroad Progress

If five or six years ago, seven years ago, when this work of reconstruction of the railroads began actively, the owners of those properties had just sat down on what they had, taken the earnings from the properties as they existed, where would your business development have been today? What has enabled this large development that has taken place since 1899 or 1900? It has been the fact that the owners of the railroads showed confidence in their properties, confidence in the territories which they served, and confidence in the people on whose favor they were dependent.

In order to permit and encourage the development of all sections of the country they began by the improvement of the lines as they then existed. They have expended millions—yes, hundreds of millions—in bringing the lines to as near perfection as possible. I do not want to go into figures. I only know those that exist upon the lines that are immediately under the control of the organizations represented by me; but what is true of ours is true of nearly all the others.

Now, by the mere expenditure of the money that was necessary to bear expenses to bring about the condition of the improvement of those lines, by that much has it given all other business in this country an opportunity to expand. It has opened the mines, it has started the mills, it has made a market for the produce of the farm, and in order that it may go on, these great transportation lines have got to continue to improve.

And how are they going to do it? They cannot get any heavier machine on 4 feet 8½ inches than they have now. I suppose some of you gentlemen have seen some of these great consolidation locomotives rocking just like a boat in a rough sea; you have seen them strike a curve and lie over like a boat going into the wind. We have got the center of gravity higher than it should be.

Now then, in order to get machines that will enable us to transport an increased volume of traffic economically, at less cost than we are doing it today, every railroad in this country must be changed. It would have been a great thing for us if instead of having 4 feet 8½ inches for the base we had a 5 foot gauge, or as it was on the old Erie Railroad and Atlantic & Great Western, the two lines running from Chicago to New York, 6 feet. That would enable us to get a heavier machine at nearer the proper center of gravity, enabling us to have wider cars and not so long, with greater capacity and shorter trains. That would seem almost impossible, but I believe that if it were done it would pay in the end. Next to that and probably the method which will be adopted will be that of electricity, where the power can be distributed over more than one part of the train.

Now then, of course that will cost hundreds of millions of dollars. Now then, if the railroads are subjected too soon unnecessarily to a reduction of their incomes, which would mean a destruction of their credits, where is the means coming from with which to make these necessary improvements in order that you gentlemen may continue in your good work of developing and making better the interests which you have under your charge?

Later, in a newspaper interview, Mr. Harriman said:

"I am a firm believer in the people owning the railroads. By this I do not mean Government ownership, but I do mean that the widest possible distribution in ownership of railway properties is a most desirable thing. Consolidation, however, of railway properties has become a necessity under present

conditions. The railways found themselves in a position where they had reached the limit in the reduction of cost of transportation and were facing the necessity of still further reduction.

"This could be accomplished only by an amalgamation of those railway properties which could naturally be worked in connection with one another. And a step further in this direction, perhaps, was the acquisition of railway properties with a view of removing possibility of ruinous wars. If it had been possible for the railways to make legal agreements with one another, I do not mean agreements for pooling traffic, but working agreements, the necessity for railway consolidation would not have arisen. There have been instances in this country where the purchase of a railway by other railroads has eliminated as high as 15,000 or 16,000 stockholders. In cases like this the railway purchased was purchased with a view to giving the purchasers an outlet for the products of the sections of the country served by them."

Government Ownership

"Do you not think," was asked, "that the present agitation and the present inquiry into the ownership and operation of railroads are directing the mind of the public into channels which may ultimately lead to Government ownership?"

"Not at all," said Mr. Harriman, emphatically. "On the contrary, the present agitation is going to have exactly the opposite effect. The more agitation there is, and the greater the discussion of these subjects, the more the people will see the incongruity of Government ownership."

"Will you say," was asked, "what some of the facts are which make you believe that Government ownership is impracticable?"

"There are many reasons," was the reply, "which must be apparent to a man who thinks deeply upon the subject. For example, the business of this country is just now suffering from a lack of transportation facilities, despite the fact that the railways have expended unheard of sums to meet the growing demands made upon them. Supposing this condition existed with Government ownership, what opportunity do you think the public would have of speedily getting additional facilities of transportation, provided that it depended upon Congressional action, which is a method known to be exceedingly slow?"

"Supposing, for example, Chicago, under Government ownership of railways, should imperatively need additional terminal facilities, which would cost many thousands of dollars, and suppose that the business commerce of that city were suffering bitterly from a lack of such facilities, how long do you think it would take Chicago to get those facilities under Government ownership of railways? Is it not plain that in order to get what she needed it would be necessary for Congress to agree to spend other large sums for other large cities, no matter whether those cities were in urgent need or not?"

Go With Political Pap

"Matters of this sort always go with political patronage, and if the improvement of the facilities and procuring of new transportation facilities should ever depend upon political patronage railroad development in this country would be badly retarded, if not stilled. Retarded development in transportation facilities always results in increased cost of operation, which in turn may bring disaster.

"Have you realized that more than thirty years ago men who had faith in the future of this country spent many millions of dollars in laying steel rails across a thousand mile desert waste of country? Have you realized that these millions were spent with the knowledge that it would be years before the development of this country would be sufficient even to pay interest on the bonded debts of the railways? Do you realize that railroad construction has preceded industrial and commercial development in this country at least a quarter

of a century, and that such has not been the case in any other country?

"I would like to ask you, in all fairness, if you think that such railway construction, that such expenditure of millions for the future would have been possible under Government ownership of railroads? Who would ever think of a national Congress voting to spend \$100,000,000 or \$200,000,000 in the hope that some time the development of the country would warrant such expenditure?"

"There are many people," it was suggested, "who insist that Government ownership in other countries has proven a success."

Foreign Railways Poor

"The railroads of other countries, when compared with the roads of this country, are mere tramways. They are not governed by the complexity of conditions which are constantly arising and which constantly surround transportation business of this country. And so I firmly believe in agitation of these public questions, because agitation is only a synonym for education."

"Do you think there is any remedy for railway consolidation or any way to prevent it?"

"It can easily be prevented by legislation," said he. "If the Government would legalize such combinations of railways as could naturally be made with a view to cheapening transportation the necessity for a general consolidation would be obviated."

"Do you regard the present commerce act as amended in the light of an assistance or otherwise?"

"I am afraid it is not going to prove much of a help to the railroads," he replied, "but I do not apprehend dire results from its administration."

BOOKS AND PERIODICALS

Supplement to Interstate Commerce Act and Federal Anti-Trust Laws. Snyder-Baker, Voorhis & Co.

This volume is a supplement to the author's earlier work (1905) upon the Interstate Commerce Act and United States anti-trust laws. The work contains full text of the railroad rate law of 1906, with the amendments to the Elkins law and copious notes of judicial decisions since the publication of the earlier work, the decisions being brought down to August, 1906. The immunity statute, with the decisions, receives careful and comprehensive consideration. The introduction to the work contains a critical review and analysis of the recent legislation concerning common carriers.

Beyond all doubt the work is the best yet issued upon the subject of interstate commerce; it could hardly be improved upon at the present time.

The author has, however, refrained from stating his views concerning the constitutionality of the law. Evidently he prefers to have the courts construe its various provisions. While the abuses of common carriers, which, in a measure, caused the enactment of the recent law, receive some consideration, we regret that the list is not exhaustive.

We believe that one can readily disagree with the author's comments concerning the applicability of the so-called Carmack amendment (initial carrier liability for loss and damage); a consideration of some Supreme Court cases (Myrick v. M. C. R. Co., 109 U. S. 110; McCann v. R. R., 174 U. S. 580; R. R. v. To-

hacco Co., 169 U. S. 311) and of the bill of lading in general use must lead to the conclusion that the present shipping document does not fall within the provisions of the statute. We think one can safely disagree with the author's statement that "carriers by water, however, who are not within the statute, so far as the conditions in the bills of lading are concerned are governed by the provisions of * * * Harter act." If the initial carriers' provision is constitutional and applies to common carriers and railroads, it must also apply in appropriate cases to water carriers, for, by the wording of the law, it is made to apply to "transportation companies."

One might also disagree with the author's views concerning the efficiency of the original Elkins law, by which punishment by fine only was provided. We regret that *Hale v. Henkle* is not considered in connection with the power of visitation and supervision.

All in all, it will doubtless require several years of judicial interpretation to ascertain the construction which must be placed upon this statute; in the meantime, the volume before us will serve its purpose well.

Federal Rate Bill and Negligence Act of 1906. Judson. T. H. Flood & Co.

This compilation is to serve as an appendix to the author's earlier work upon the subject of interstate commerce. The compilation shows haste in preparation, for it is in no wise complete, and does not rank with the work of which it forms an appendix.

Exporters' Encyclopædia, 1907 (Third Edition). Exporters' Encyclopædia Company, 78-80 Broad street, New York.

This is a handsome cloth bound book of 650 pages, containing full and authentic shipping instructions, in detail, for every country in the world.

It gives the names and addresses of all the transportation companies, both steam and sail, from New York, Philadelphia, Boston, Baltimore, New Orleans, Galveston, etc. (arranged separately for each country). It tells every port of call; every point for which bills of lading may be obtained; gives complete lists of the prominent inland cities and towns, telling where they are located, how they are best reached and the time to principal places. It explains all that is required as to the arrangement of consular documents, gives the consular charges and shows fac-simile consular invoices (with English translations) for all countries. It gives full information regarding the requirements of the different foreign governments and of all the transportation routes. It shows how to pack, mark and ship; how to insure and consign; how to arrange bills of lading, custom house clearances, "drawbacks," drafts, etc.

The publishers assert that all the information contained in the book has been carefully revised by the proper authorities, and shippers may therefore rely upon the accuracy of every statement.

upon hundredweights, one-half tons, tons and four tons.

There are a great many creases to be smoothed out of the new rate law, and if the ironing is not well done by the Commission the whole subject may again receive the attention of Congress.

THE brilliant but erratic Corporation Counsel of Chicago, J. Hamilton Lewis, proposes to compel the Pullman Company to pay certain taxes which he allèges are due to Cook County. This is to be accomplished, if published reports are true, by one or two processes, the second being the execution of the first.

**By All Means
Let Us
See the List**

He has threatened to make public the list of persons to whom Pullman passes are given; this list

is said to contain 1,000 officials belonging to the legislative and judicial branches of the Federal and Illinois governments. If this threat to publish the list does not cause the sleeping car company to disgorge the taxes which the Corporation Counsel believes to be due, he proposes to follow up the threat by the actual publication of the list.

We sincerely hope that the company will not pay the taxes because of the threat of the Corporation Counsel, for we would like very much to see the list. We would like to know whether or not prominent members of Congress hold these pieces of pasteboard. It might throw some light upon their feelings as expressed in their speeches during the last session of Congress. We would like to know whether those who stood in the front rank and flourished guns at tyrannical corporation abuses stand "present arms" before the Pullman Company.

**Addresses by
Three Leading
Railroad Presidents**

DURING the last month there have been some notable addresses by leading railroad men. Before the

Merchants' Club, of Chicago, James J. Hill spoke on "Reciprocity with Canada," but incidentally touched upon the car shortage and the demand for additional railroad facilities in this country in these words:

Today the entire country is suffering for want of transportation facilities to move its business without unreasonable delay. The prevailing idea with the public is that the railways are short of cars, while the actual facts are that the shortage is in tracks and terminals to provide a greater opportunity for the movement of cars. Formerly the new mileage added yearly was about 4 to 5 per cent., or, enough to keep pace with the growth of the country's traffic. In recent years the traffic has increased at a much higher rate. For instance, between Chicago and New York it has doubled in about eight years, while the facilities for handling it have not increased more than 12 or 15 per cent.

The Interstate Commerce Commission reports have recently shown that from June 30, 1895, to the same date 1905, or ten years, the railway mileage of the country increased from 180,965 to 216,974, or 20 per cent.; the number of cars from 1,265,108 to 1,842,871, or 45 per cent., and the number of engines from 36,610 to 48,357, or 32 per cent. During the

same period the ton-mileage of freight traffic increased over 110 per cent. But during this period of expansion the actual mileage of railroad line increased by only 20 per cent. So you see, gentlemen, where you stand. The traffic increases wonderfully, but the railroad facilities have not been able to keep up the pace. That is why today your business in some respects is paralyzed while you cry aloud for transportation help. Long paralysis means slow death. The fact is, probably 40 per cent. of our business today is without any facilities with which to handle it.* * *

Do you know that it would take 120,000 miles of new road to measure up with the demand? Do you know that to build this road would require as much money as was expended for the Civil War—between four and one-half and five billion dollars? To construct this extra mileage in a short time, say, in six years, would be impossible, as there is not enough money in the country to bear the burden. There is not enough labor, nor could sufficient rails be manufactured for the purpose. All these conditions are as a stone wall against which capital and labor would alike throw themselves in vain. You say we should invest more money under these conditions. And I say that it cannot be done. How can it be done when a large section of the public is raising the cry and clamor that to be the head of any big railroad is to be an outlaw?

We find two great parties talking about the railroads. One says the Government should at least direct the roads—that the companies should not, but the Government should. And another party says the Federal Government should run the trunk lines, which make all the money, and the several States the branch lines, which are not so profitable. With all this talk and with the situation just as I have stated it, based on Government reports, is this the way, I repeat, to get the railroads of the nation to extend their lines, to increase their mileage?

E. H. Harriman spoke twice in Kansas City, once before the Commercial Club, and again before the Trans-Mississippi Congress. These addresses, both impromptu, are given verbatim elsewhere in *FREIGHT* from the reports printed in the *Kansas City Times*. Some excerpts from a newspaper interview also are given.

Before the Alabama Agricultural Association at Montgomery on October 25, Samuel Spencer made an address, which we likewise reprint in full from the *Montgomery Advertiser*.

It is highly improbable that any abler exposition of the subject of the railroads' relation to the people than the one made by Mr. Spencer has ever been delivered. In view of the fact that the Governor-elect of Alabama, B. B. Comer, is a pronounced anti-railroad man, Mr. Spencer's address aroused very great interest throughout the South.

Put down 6 and carry 2.

Tum, tum, tum; tum, tum, tum.

Gee, but this is hard to do.

Tra la lu; tra la lu.

You can think and think and think.

Until your brain is numb;

We don't care what shippers say:

We can't do this sum—of Locals.

Adapted for the use of the Interstate Commerce Commission.

Every traffic manager should have a FREIGHT CLAIM INDEX AND RECORD. It saves time and money. Price \$5.

M. A. Knapp's Government Ownership Paper

THE advocates of government ownership of railroads are quoting with approval a paper written in January, 1902, by M. A. Knapp, then and now Chairman of the Interstate Commerce Commission. This paper, while written four years ago, summarizes the various arguments in favor of and against government ownership of railways. Coming from such a source, the concluding declaration, after all of the arguments have been considered, has added courage to the corps who hope to see the scheme of Mr. Bryan become a reality. That concluding declaration is, "if regulation fails public ownership will be the next and early resort."

Summary of the Paper

A summary of the paper is as follows:

The acquisition by the Federal Government of the railways is a project of such colossal importance as to place it outside the range of probability. The problem cannot be put aside as speculative because there are many ardent advocates of it. As we come to learn the nature of transportation, it cannot but be expected that the argument in favor of railway nationalization will become more attractive and convincing. Public ownership in operation of railways is chiefly important in its economic aspects; it is simply a question of expediency.

The political objection is of a two-fold form, namely, the scheme is opposed to the traditional policy of our country as well as the historical development of its institutions. The task of successful acquisition, management and administration is a complex one and the objections are not easily answered. Previous enlargement in the field of public performance has been justified by results, and up to this time no function or activity has been undertaken which we would consent to abolish.

It is alleged there is danger through party control of such vast properties; this is a serious objection, but the danger in this direction would be far less than is imagined and would not be long in disappearing if an enlightened public sentiment would compel stringent civil service rules preventing this abuse. In confirmation of this we can note the influence in politics now exercised by the railways.

There are serious evils connected with existing railway methods. Competition has been upheld and enforced and there have been resulting discriminations. Government ownership would undoubtedly remove these, for it would insure open and stable rates to all alike. While there might be some frauds, as there are frauds under the customs and internal revenue laws, proper penal legislation would prevent them. Under government ownership secret and preferential rate will disappear, and this is the most persuasive argument in favor of the plan. There would result, however, a certain rigidity of rates which would prevent changing them to meet commercial conditions.

Security of Capital

Another advantage of government ownership is the security of capital which would be invested in the obligations, use and purchase of roads. This could be used as a basis of currency issues, and as investments for financial institutions. It would only be necessary that the railroad should be self-supporting in order that the securities should serve as a safe and stable foundation for our financial system. With such securities, manipulation of stocks and speculation would cease to a certain extent and mark a distinct advance in the direction of business morality. The pamphlet continues:

"It is further claimed that public ownership would secure lower rates of transportation. Theoretically, this is true, but whether that result would be realized as a matter of prac-

tical experience is more than doubtful. It seems to be the case everywhere, and is likely to be for a long time to come, that Government service costs more in proportion to the work performed than private service. It is quite conceivable that the railroads of this country could be made to pay interest, say from 3 to 4 per cent., on their fair valuation, in addition to all their expenses, with a general scale of rates somewhat below the present standard. Given the same efficiency of management, the same energy and economy of administration, the same basis of wages and salaries as obtain under private ownership, and a considerably smaller charge than is now paid per unit of service would be sufficient for financial solvency. But this assumes a state of things not likely to exist if the railroads were operated as a Government function. Any expectation to the contrary is not warranted by knowledge of what has generally characterized the various branches of Government service."

Public ownership will probably mean higher wages and shorter hours of employment, but this would call for increased number of employees and material addition to the cost of maintenance and operation. The present high salaries of railway presidents, which are often alleged capable of abolition under Government ownership, would not in all probability, reduce the cost of transportation.

A Political Issue

Government ownership could not correct the custom in the past of building parallel lines; as to future construction, additional roads might be laid out on a more rational plan. The strife of localities for new carriers might cause too great conservatism on the one hand or overproduction on the other; nay, more, extension of railways might become a political issue.

One aspect of the rate question is wholly independent of railway ownership. This is a discrimination between communities and different articles of traffic. While, under Government ownership secret discriminations would disappear, there would still remain the relation of rates between commodities and between localities. "These and an endless variety of similar questions would demand solution under Government ownership precisely as have demanded solution at the present time under private ownership. And the danger is that those questions would become political issues to be settled by the action of the majority party. * * * If the Government owns the roads and operates them, Congress may fix the price of transportation as it now fixes the price of postage or the internal revenue tax on any article; and it is conceivable that, as the result of an election or in the redemption of party pledges, a system of rates might be adopted which would enormously benefit one or more sections of the country whose representatives combine to that end, while placing other sections at serious disadvantage. In this direction I see the greatest difficulty, and it is on this ground, more than any other, that I should regret to see the Government take up the business of owning and operating our railway lines."

The acquisition by the Government might seriously restrict private enterprise by withdrawing private investments from the field of private activity, and in a way leave insufficient scope for individuals' efforts and achievement. Opposed to this, however, we can assume that there will be ample opportunities found in other directions by reason of our varied and exhaustive resources, and further by the present gross inequality in the distribution of wealth and the dissatisfaction which follows.

Every traffic manager should have a FREIGHT CLAIM INDEX AND RECORD. It saves time and money. Price \$5.

"The Great Black Sin of the Times"

UNITED STATES JUDGE PETER S. GROSSCUP, of Chicago, speaking at a dinner of the Knife and Fork Club, at Kansas City, dwelt at length upon the trust problem and its solution. He pointed out that thirty years ago the German people went through corporation experiences very similar to those through which we are now passing, and worked out a remedy that has proved thorough in its effectiveness.

In view of the different conditions obtaining in the United States he did not consider the German remedy altogether applicable to the evil in this country, but he particularized some of the principles on which he said the reconstruction of American corporations should take place.

Corporations and the People

"Unquestionably the important position that Mr. Hearst has obtained in the politics of New York, and in the politics of the country, is due more than to all other causes combined to the relation that the corporations of the country are believed to bear to the people of the country and to Mr. Hearst's attitude on the questions that those relations raise. And out of this corporation question, too, Mr. Bryan has obtained his political power and Mr. Roosevelt his foremost power and position.

"No one not purposely closing his eyes is blind to what the chief cause of all this is. That cause is not in the mere fact that the great new industrial life of the country is an incorporated life; the new industrial life could have become incorporated as fully as it is incorporated without producing these results.

"The trouble has been that no pains were taken by the States that gave great corporations birth to make them media through which the people at large might transmute their individual savings into permanent property interests; no pains were taken to furnish the worker with a medium through which he might with reasonable safety transmute a part of his day's profits into a permanent property interest; no pains were taken to interest either worker or people as proprietors at all, the one instrumentality in which the new industrial life had embodied itself having been left, though State created, a mere shell under whose roof and behind whose walls free rein was given to every form of treachery and nearly every form of theft. This is the great black sin of the times in which we live.

Germany's Experience

"But how, you ask, would you remove the causes—how rebuild the corporation? Let me take you, for an illustration, always remembering that it is an illustration only, to that country that has led the world in solving some of the world's great problems. Thirty years ago the German people went through corporation experiences much like our own. There, as here, the corporation, as originally designed, was a mere shell. There, as here, under the shelter of that shell, the property of the country was being transferred from the German people at large, even the little they had, to the few.

"There, thirty years ago, as here now, great corporate scandals were exposed. And there, as here, the human nature that is everywhere behind civilization eventually began to recoil. It began there before it began here, only because conditions reached a climax there earlier than here and because we as a people were too prosperous and too busy to look even a little way beneath the surface of things.

"But when the work of reform did come there, it was a genuine reform. It did not content itself with indiscriminate denunciation or with mere lawsuits. Nor did it die out, leaving the door open to every character or corporation the cunning of man might conceive. Before a corporation can be

organized in that country it must prove, as in a court proceeding, its rightful title to a corporate existence. In the same way it must establish the amount and the character of the capitalization it is allowed to put out. When property is turned in, its value must be judicially ascertained. Upon officers and directors is not conferred supreme power; in the German corporation the shareholders' meeting is the counterpart of our New England town meetings—a genuine assembly intended to do something more than pass resolutions of approval.

Our Work of Reconstruction

"I am not holding up the industrial life of the Germans as an example of what our own should be, or their corporation as an institution to be followed, line by line, in our own work of reconstruction. We have found for our workman ways for increasing his share in the division of the profits of enterprise that the German workman does not enjoy. What the American in the ordinary walks of life could lay by for investment is larger, happily much larger, than anything the German can lay by. But the example is none the less valuable; for if on such conditions the German corporation could be reconstructed on lines that have successfully interested as proprietors to the extent of their means the German people at large—resulting in the fact that it is not upon her corporate industries, but upon her unjust landed proprietorship alone that the forces of German Socialism are directed—what may not be expected in America when the work of corporate reform, in the true spirit of reform, is undertaken and accomplished?

"But while I am not attempting in detail to point out the exact structure of the American corporation, as it should stand when reconstructed, some of the principles on which the reconstruction should take place can be particularized. The reconstructed corporation, for instance, should have no place in it for those schemes of spoliation that, within or without, plunder the people whose capital has created it, and whose patronage must support it.

Securities Must Be Related to Values

"In the reconstructed corporation the securities issued must be related in some way to the values actually put in. In the reconstructed corporation, not only must the officers be trustees of the stockholders, held to the strict accountability to which individual trustees are now held, and denied the privilege as individual trustees are now denied of making profit out of their trust; but the administration of the trust, as in the case of individual trustees, must be constantly kept under the eye of some tribunal of the Government. And in the reconstructed corporation tangible inducements ought to be given to the workmen, the clerk, the employe of every kind, to obtain proprietorship.

"I shall not attempt to point out in detail how existing corporations shall be brought into the new régime. Considering, however, that existing corporations depend largely on the public from time to time to take their securities, especially their bonded securities, the probability is that, as a matter of self interest—in many cases of life or death—existing corporations would be compelled to conform their organization to the reconstructed organization prescribed by the Government, for otherwise they would brand themselves as suspects.

"Then, too, within the respective powers of the nation and the States to prescribe the kind of collateral that banks, insurance companies, and savings institutions shall not take for loans, the nation and States could exert a leverage toward the new order of things that could not be resisted, for nearly every great corporation is a heavy borrower from these financial reservoirs of the people's wealth.

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALENDAR OF HEARINGS

Pueblo, Col., December 3, 1906.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.

Denver, Col., December 4 and 5, 1906.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.

COMPLAINTS FILED

J. B. Harrell v. Missouri, Kansas & Texas Railway Company

Unreasonable rate on bituminous coal from St. Louis to Oklahoma City, Okla.

Commercial & Industrial Association of Union Springs, Ala. v. Central of Georgia Railway Company

Discrimination in favor of certain cotton compresses, to the disadvantage of complainant's compress at Union Springs.

Commercial & Industrial Association of Union Springs, Ala., v. Louisville & Nashville Railroad Company et al.

Unreasonable rates on general merchandise from St. Louis, Nashville and Memphis to Union Springs, Ala.

National Petroleum Association v. Chicago, Milwaukee & St. Paul Railway Company et al.

Unreasonable rates on petroleum from Chicago, Peoria and Milwaukee to St. Paul, Minneapolis and Duluth.

National Petroleum Association v. Chicago, Milwaukee & St. Paul Railway Company et al.

Unreasonable rate on petroleum from Chicago and Peoria to Omaha, Sioux City and Sioux Falls.

National Petroleum Association v. Pennsylvania Railroad Company et al.

Unreasonable rates on petroleum from Ohio and Pennsylvania points to Pacific Coast terminals.

Hope Cotton Oil Company v. Texas & Pacific Railway Company et al.

Unreasonable rates on cotton seed from Louisiana points to Hope, Ark.

Riverside Mills v. Southern Railway Company et al.

Unreasonable rates on waste from Georgia points to New York, N. Y.

Howard Mills Company v. Missouri Pacific Railway Company et al.

Differential in favor of wheat and against flour from

Kansas points to Arizona and Pacific Coast terminals.

Farmers', Merchants' & Shippers' Club of Kansas v. Atchison, Topeka & Santa Fe Railway Company et al.

Unreasonable rates on wheat and corn from Kansas points to Kansas City, Mo., and Galveston and Gainesville, Tex.

Farmers', Merchants' & Shippers' Club of Kansas v. Chicago, Rock Island & Pacific Railway Company et al.

Unreasonable rates on wheat and corn from Kansas points to Kansas City, Mo., and Galveston and Fort Worth, Tex.

The Territory of Oklahoma v. Chicago, Rock Island & Pacific Railway Company et al.

Unreasonable rates on wheat for export from Oklahoma points to Galveston, Tex.

F. S. Ulmer v. Texas & New Orleans Railroad Company

Unreasonable rates on lumber from Texas points to points in Mexico.

Santa Fe Central Railway Company v. Atchison, Topeka & Santa Fe Railway Company et al.

Refusal of defendant to make joint through passenger rates with complainant.

J. R. Lucas & Co. v. Louisville & Nashville Railroad Company

Discrimination against East St. Louis, Ill., in reconsignment of hay.

Nobles Brothers Grocer Company et al v. Fort Worth & Denver City Railway Company et al.

Refusal of defendants to apply Texas common point rates to Amarillo, Tex.

Channel Commercial Company v. Southern Pacific Company et al.

Discrimination against San Buena Ventura, Cal., in favor of other Pacific Coast points.

Frye & Bruhn v. Northern Pacific Railway Company et al.

Refusal of defendants to allow shipment of hogs in double-deck cars from points in Iowa, Nebraska, North Dakota and South Dakota to Seattle, Wash.

Yawman & Erbe Manufacturing Company v. Atchison, Topeka & Santa Fe Railway Company

Unjust classification of roller letter copiers.

Roswell Commercial Club et al v. Atchison, Topeka & Santa Fe Railway Company et al.

Unreasonable rates on all classes and commodities of freight from and to Roswell, N. M., and adjacent points.

Preston & Davis v. Delaware, Lackawanna & Western Railroad Company

Refusal of defendant to make delivery of petroleum and its products, in tank cars, to its Brooklyn terminal.

W. B. Johnston v. St. Louis & San Francisco Railroad Company et al.

Unjust and discriminatory rates on coal from points in Indian Territory to Enid, Okla.

Commercial Club of Santa Barbara, Cal., v. Southern Pacific Company et al.

Discrimination in freight rates generally against Santa Barbara and in favor of other Pacific Coast points.

Kins.lla Grain Company v Chicago & Northwestern Railway Company et al.

Unreasonable and discriminatory rates on oats shipped in mixed carloads with other grain.

HEARINGS HELD

October 31, 1906, Washington, D. C.—In the matter of allowances to elevators by the Union Pacific Railroad Company. Final argument.

November 8, 1906, Washington, D. C.—Cattle Raisers' Association of Texas v. Chicago, Burlington & Quincy Railway Company et al. Motion to reopen case.

November 8, 1906, Washington, D. C.—Cattle Raisers' Association of Texas v. Missouri, Kansas & Texas Railway Company et al. Motion to reopen case.

November 9, 1906, Washington, D. C.—Petition of Western Union Telegraph Company in relation to transportation of supplies and men for construction and repairs of telegraph lines.

November 9, 1906, Washington, D. C.—In the matter of the transportation of land and immigration agents.

November 12-14, 1906, Washington, D. C.—Conference of Commission with representatives of carriers concerning methods of filing, publishing and simplifying rate schedules.

November 20, 1906, Milwaukee, Wis.—In the matter of the relations of common carriers subject to the Act to Regulate Commerce to the ownership and operation of elevators, and the buying, selling and forwarding of grain.

November 23, 1906, Duluth, Minn.—In the matter of the relations of common carriers subject to the Act to Regulate Commerce to the ownership and operation of elevators, and the buying, selling and forwarding of grain.

November 27, 1906, Salt Lake City, Utah.—In the matter of the relation of common carriers subject to the Act to Regulate Commerce to coal and oil and the transportation thereof.

November 30, 1906, New York, N. Y.—Preston & Davis v. Delaware, Lackawanna & Western Railroad Company.

Tariff Rulings, etc.

On November 16, the Interstate Commerce Commission issued its Tariff Circular No. 6-A, containing additional ruling in correspondence between the parties and rests on their custom and practice, a memorandum of its terms must be filed with the Commission."

The Commission's Tariff Circular No. 5-A, of October 12, 1906, contained the following paragraph:

"DIVISION OF JOINT RATES—CONTRACTS AND AGREEMENTS FOR MUST BE FILED.—A contract, agreement or arrangement between common carriers governing the division between them of joint rates on interstate business is a contract, agreement or arrangement in relation to traffic, within the meaning of Section 6 of the act to regulate commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement or arrangement is verbal or is contained in correspondence between the parties rests on their custom and practice, a memorandum of its terms must be filed with the Commission."

Answering many inquiries as to just what is desired under this rule, the Commission states that when the agreement or arrangement under which divisions are made is in the form of a contract or formal agreement or recorded memorandum a copy of each such contract, agreement or memorandum is to be filed with the Commission. Where such arrangement is made by correspondence or verbally, a concise memorandum of the basis and general terms and application of the arrangement or practice is to be filed with the Commission. The filing of the division sheets themselves is not desired.

TRANSPORTATION FURNISHED CARETAKERS OF LIVE STOCK, POULTRY, FRUIT AND VEGETABLES.—Section 1 of the act to regulate commerce provides that free transportation may be furnished "to necessary caretakers of live stock, poultry and fruit." The Commission is of the opinion that the term "fruit" in this connection includes perishable vegetables, when shipped under conditions that render caretakers "necessary." The Commission is also of opinion that transportation of such "necessary caretakers of live stock, poultry and fruit" includes their return to points from which they actually accompany such shipments. This transportation may be in the form of free pass or reduced rate transportation, but in any event it must be the same for all under like circumstances, and must be published in the tariff governing transportation of the commodity.

THROUGH RATES WHICH EXCEED THE SUM OF LOCALS.—Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. The Commission announced in its Tariff Circular No. 5-A, of October 12, 1906, a rule permitting practically immediate reduction of a through rate which is higher than the sum of the locals between the same points. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through rate, which is higher than the sum of the locals between the same points, as *prima facie* unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate.

CHANGES OF RATES ON LESS THAN STATUTORY NOTICE—WHOSE SIGNATURES SHALL APPEAR ON APPLICATIONS.—The act to regulate commerce authorizes the Commission, in its discretion, and for good cause shown, to permit changes in tariff rates on less than the statutory notice. It is believed that this authority should be exercised only in instances where special or peculiar circumstances or conditions fully justify it. Confusion and complication must follow indiscriminate exercise of this authority. Applications for permission to change tariffs on short notice are received in indefinite and informal ways and over the signatures of many different officials. Some telegraphic requests are received

which make no mention of verified copies and which are not followed by verified copies, as per rule previously made by the Commission. The Commission, therefore, announces that applications for permission to change tariffs on less than statutory notice shall be addressed to the Interstate Commerce Commission, in form specified by the Commission under date of September 17, 1906, and must be over the signature of the president, vice-president, general traffic manager, assistant general traffic manager, general freight agent or general passenger agent, specifying title.

The Commission requests that as far as possible these applications be sent by mail and not by telegraph.

CORRESPONDENTS WITH COMMISSION ON FREIGHT AND PASSENGER MATTERS.—It is believed that the best results and understandings will be reached if the conducting of ordinary correspondence between carriers and the Commission is confined to as few persons as possible. Request is therefore made that the traffic manager or the general passenger and general freight agents of each road designate not more than two officials or other representatives to respectively conduct the correspondence with the Commission on freight and passenger matters, and to promptly advise the Commission of such appointments.

DISTRIBUTION OF OFFICIAL CIRCULARS AND RULINGS TO CARRIERS.—It is obviously impracticable for the Commission to place copies of its official circulars and rulings in the hands of all the officers of carriers or to furnish copies for distribution among them. The officers at the head of traffic departments, or in charge of passenger and freight departments, respectively, will please designate for each road one official in the passenger department and one the freight department (unless both are under one head officer and one appointment is considered sufficient) to whom such circulars and rulings are to be sent; and arrange for such designated officials to disseminate the information among other interested officers and agents. Please report these appointments to the Commission as early as possible.

DISTRIBUTION OF OFFICIAL CIRCULARS AND RULINGS TO COMMERCIAL ORGANIZATIONS.—With a view of giving prompt information to those who may be interested, the Commission will, upon application, place upon its mailing list regularly organized boards of trade, chambers of commerce, commercial clubs, and shippers' associations, for the purpose of mailing to them copies of official circulars containing rulings and orders of the Commission.

Status Under Amended Act of Cases Previously Pending Before the Commission

In opinions by Commissioner Prouty, the Commission has recently announced its decisions upon motions made by complainants to reopen two cases and allow further testimony, with a view to obtaining an order of the Commission under the act as amended June 29, 1906. In one of these cases, that of the Cattle Raisers' Association of Texas v. Chicago, Burlington & Quincy Railway Company et al., the petition is denied, the facts and reasons for such denial being stated by the Commission as follows:

The original complaint in this case was filed September 1, 1896, and the matter has been pending in various forms before the courts and the Commission since then, the subject of controversy being the charge of \$2 per car made by the defendants for the delivery of carloads of live stock at the Union Stock Yards, Chicago. On August 16, 1905, the Commission filed a report and opinion holding that the imposition of a greater charge than \$1 was unjust and unreasonable, and on November 16, 1906, an order was issued by the Commission directing the carriers to cease and desist from imposing the charge of \$2. The question of reparation was reserved for future disposition.

No proceedings have been begun to enforce this order in

the courts, and the complainant now files a petition asking that the Commission strike off its former order, set down the case for further hearing, and make an order under the present fifteenth section. No claim is made that the Commission committed any error in its findings of fact or in the making of its order as the law formerly stood, the only object of the complainant being to secure an order under the amended fifteenth section.

Without inquiring what authority as a matter of law this Commission may have over a case in which an order was issued before the amendment of June 29, 1906, took effect, we are all agreed that this petition ought to be denied. This case has been ended by the making of an order. For nearly a year it was optional with the complainant to proceed in court with the enforcement of that order, and such may be its right even now. We feel that when an order has been made the case before the Commission should be treated as closed, and that it ought not to be reopened except upon a showing that some wrong or injustice will be effected. The petition is denied.

The case of the Cattle Raisers' Association of Texas v. Missouri, Kansas & Texas Railway Company et al., known as the Live Stock Rate Case, stands upon a somewhat different footing, and in that case the petition to reopen and apply the new law is granted. The following extracts from the opinion of the Commission show the history of the case, the points which differentiate it from that given above, and the reasons relied upon by the Commission to justify the action indicated:

February 10, 1904, the complainant filed its petition alleging that certain advances in rates on live stock from various points in the Southwest to Kansas City and other live stock markets were unjust and unreasonable, and praying that the Commission would order the defendants to cease and desist from continuing such rates in effect and for reparation. To this the defendants made answer that the advanced rates were just and reasonable.

Upon the issue thus formed a great mass of testimony was taken and elaborate arguments were presented; and on August 16, 1905, the Commission filed its report and opinion sustaining, in the main, the contention of the complainant. On November 16 following the complainant filed with the Commission a motion for additional and more specific findings. This motion was granted and the matter again taken under advisement for that purpose. No additional findings have yet been made, and the case is still pending. No order has ever been made.

On June 29, 1906, the act to regulate commerce was amended. The fifteenth section of that act as thus amended provides that the Commission, in a proper case, shall have authority, and that it shall be its duty, if in its opinion a given rate is unjust and unreasonable, to prescribe a just and reasonable rate which shall not be exceeded by the defendant in the future. Subsequent to the taking effect of this amendment the complainant filed this petition, praying, in substance, that the Commission proceed in the case to the making of an order under the new fifteenth section. This petition has been served upon the defendants, who have made various answers and objections, all of which come, however, to the proposition that this Commission has no authority to make an order under the new fifteenth section in this proceeding for the reason that such an order cannot be entered in a case which was pending when the amendment took effect.

This petition was referred to in the argument by counsel for both the complainant and the defendants as a supplemental petition under Section 16a, but it is evident that this provision of the statute has no application. That section is intended to give the Commission the right to rehear a matter for the purpose of correcting any injustice in its previous order. The petition before us alleges no such wrong and asks for no such change. Its only purpose is to secure from the Commission an order under the amended

Section 15, which could not have been made upon the same state of facts when the original complaint was filed or when the report and opinion of the Commission was first rendered. The sole question for consideration is, Can the Commission make its order under the fifteenth section upon a complaint filed previous to the date when the amended section went into effect? The defendants insist that this amended section confers upon the Commission a new jurisdiction, in that the Commission is given authority to prescribe a rate for the future, and that this new jurisdiction can only be exercised upon a complaint filed subsequent to the time when the jurisdiction was conferred.

The act to regulate commerce has always provided that the rates charged by carriers subject to its provisions should be just and reasonable. In this respect the law stands today precisely as it has stood from the beginning. Under the act previous to this amendment it was the right of a party to complain that rates were unjust and unreasonable, and it was the duty of the Commission to consider that complaint in precisely the same way that it does now. If it found that the rate was unjust and unreasonable it was its further duty, in passing upon a demand for reparation, to determine by how much that rate had been unjust in the past. Looking to the future, however, it could only direct the carrier to cease and desist from charging the unreasonable rate. Today in this latter respect it can go farther and can fix the rate, which the carrier may not exceed. In other words, the amended act confers upon the Commission power to enforce what has always been a requirement of the statute by the application of a new remedy. In this sense alone can it be said that the amended fifteenth section, as applied to a case like that before us, enlarges the jurisdiction of the Commission.

But if it be true that Congress has thereby conferred upon this body additional jurisdiction, it is clear that in so doing Congress might also prescribe the conditions upon which that jurisdiction should be exercised, and this is explicitly done in the fifteenth section itself. Before the Commission can make an order under that section two conditions must be complied with: first, a formal complaint must have been filed under the thirteenth section; second, there must have been a full hearing of the parties.

In the amendments of June 29 the thirteenth section was in no respect changed. If this complainant were to file today its complaint against these rates, that complaint might well be in the precise form of the original complaint in this proceeding, excepting only its prayer for specific relief, which is not essential. We have, therefore, a compliance with the first prerequisite to the exercise of this jurisdiction, in that, in this case, there has been filed a complaint under the thirteenth section.

The second condition precedent is that a full hearing shall be granted. Certainly the hearing upon this record has been sufficiently full. More than six weeks were expended in the taking of testimony, which, as extended, covers several thousand typewritten pages. It would seem that every fact which could have the slightest bearing upon the subject has been elaborated and every consideration dwelt upon.

But it is said that the question now presented is different from the question presented then; that the question then was, Is the rate charged unreasonable? That the question now is, What will be a reasonable rate for the future?

It was the duty of the Commission in disposing of this complaint under the former statute to determine whether the rates charged by the defendants were just and reasonable, and if it found them unjust and unreasonable to determine by how much, in order that reparation might be awarded. It is now necessary to determine by how much these rates are unjust and unreasonable, looking to the future. While this question is, strictly speaking, a new one, and while it is conceivable that the Commission might find that a rate would be reasonable for the future which had been unrea-

sonable in the past, it is probable that the character of the testimony introduced upon the hearing of complaints like that before us in the future will not differ much from what it has been in the past.

But if the fact be otherwise, if the carriers have failed to produce any evidence either because the decision of the Commission was not, in their estimation, of the same importance before as now, or because the issue of fact is different now than formerly, or if conditions have changed since this testimony was taken, their rights in the premises can be and should be amply protected. All the parties, both complainant and defendants, should be allowed to introduce whatever additional testimony they may desire. It is difficult to see why, when such opportunity for further hearing has been given, the second prerequisite to the making of an order under the fifteenth section will not have been fully met. If so, it is not only the right of this body, but it becomes its imperative duty under that section to proceed to the making of such an order.

This view is confirmed by a consideration of what would be the consequence of a contrary holding. The fifteenth section was amended by rewriting the section itself. There is today no fifteenth section as it existed when this complaint was filed, and there is no provision under which the terms of that section have been continued in force. If, therefore, it should be held that this Commission has no authority to make an order in the case before us under the fifteenth section as it now stands, it must follow that no order of any sort can be made; in other words, that this proceeding has been ended by legislative enactment. When it is remembered that there were pending before this Commission a great number of complaints at the time of this amendment in all stages of advancement, that in many of them large sums of money and much time had been expended in the taking of testimony, it is incredible that Congress can have intended to arbitrarily and unnecessarily terminate these suits which had been brought and prosecuted in good faith under the law as it previously stood. Certainly, no interpretation should be given this statute which will produce such a result in the absence of explicit language to that effect.

We think that this case should be set down for further hearing; that both the complainant and the defendants should be allowed to introduce such additional testimony as they may be advised; that thereupon the Commission should re-examine the whole record and reach such conclusion as justice requires, and that upon this conclusion it should proceed under the fifteenth section, as it now stands, to the making of an order.

Provisions of the Law as to Free or Reduced-Rate Transportation

In an ex-parte proceeding entitled "In the Matter of the Transportation of Land and Immigration Agents," which arose upon complaint of the Illinois Central Railroad Company as set forth in a statement filed with the Commission by J. C. Stubbs, chairman of the Committee of Western Lines, the Commission has under date of November 16 issued an opinion which reaffirms the ruling given in its Tariff Corcular No. 5-A (set forth in the November issue of FREIGHT), and holds that land and immigration agents, unless they are *bona fide* and actual employees of carriers subject to the act to regulate commerce, are not within the excepted classes specified in that statute, and providing transportation for such agents free or at reduced rates is unlawful. The following extracts from the Commission's opinion show clearly the facts in the matter, and the reasons for the decision of the Commission:

It appears that the important railroads operating in the territory west of Chicago have been accustomed to give free transportation to numerous persons who are engaged in selling lands belonging to private owners and who accompany

prospective purchasers to view such lands along the respective railway lines. These persons are not employed by the railroads, but secure their compensation for the most part, if not altogether, by commissions on the land sales effected. The interest of the railroads is promoted by securing settlers upon lands otherwise unoccupied whose productive industry increases the business of the carriers. This interest has been advanced as a justification for giving free transportation to these agents. Some of them appear to have annual passes, or passes good for a stated period, while others receive round-trip passes for each journey which they take in the prosecution of their business. There are many thousands of these persons and their operations are claimed to be of great benefit to the roads which provide them with free carriage.

Soon after the amended law took effect on the 28th of August the carriers in question, or most of them, were advised by counsel, as the Commission is informed, that the free transportation of the class of persons mentioned had become unlawful. Thereupon some of the roads, including the Illinois Central, at once discontinued the free carriage of these land agents, but other roads are still issuing passes to them as heretofore.

Under date of October 12 the Commission announced certain rulings by Tariff Circular 5-A; among which was the following:

"ISSUANCE AND USE OF FREE PASSES.—The provisions of the act relative to the issuance of free tickets, free passes, free transportation, or free carriage to employes of carriers apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carriers. Land and immigration agents, unless they are *bona fide* and actual employes, representatives of correspondence schools, agents of accident or life insurance societies, agents of oil or lubricating companies, etc., are not within the classes to which free or reduced rate transportation can be lawfully furnished."

This ruling specifically names the classes of persons in question and holds that they cannot lawfully receive free transportation. The facts disclosed at the hearing of this matter confirm our convictions of the correctness of the ruling and nothing has been shown which warrants a modification of its terms or application. The land agents to whom free transportation has been given are in no sense agents or employes of the carriers. They are not engaged in the business of the carriers and their compensation comes from the persons whose private lands they may be able to sell. It is true that their operations may be indirectly of important benefit to the carriers, but this circumstance affords no defensible reason for transporting them without charge. If a resulting advantage of some sort furnishes a reason for the free carriage of persons engaged in private enterprise the right to give passes would extend to a vast number of persons and be subject to no practical limitation. The ruling heretofore made is undeniably correct and its application so plain and definite as to obviate the necessity for explanation.

Nor can the carriers make employes of the class of persons in question by appointing or calling them agents, when they are in fact engaged in efforts to sell lands belonging to outside parties and receive no compensation or only nominal compensation from the carriers except free transportation over their lines. The relation thus existing is not that of *bona fide* and actual employes and furnishes no ground for exemption from charges imposed upon ordinary passengers.

We do not assent to the proposition that because the amended law prohibits passes after January 1 next, except to certain specified persons, that persons not within the exceptions named in the old law can lawfully be given free transportation for the balance of this year. On the contrary, we hold that it was always illegal under the original act to give free transportation, save only to the extent permitted by that law. The course taken by the Illinois Central and other roads acting in like manner is to be commended and the complaint of that company is fully sustained. Such carriers as

have continued to give free transportation to these so called land agents, particularly since the ruling of the Commission above quoted, must be adjudged to be acting unlawfully in that regard. Unless they immediately cease from the practices hereby condemned as illegal it will be the duty of the Commission to take measures to prevent further disobedience.

Underbilling and Misdescription of Freight

A petition recently filed with the Commission by the Larkin Company, of Buffalo, N. Y., requested the Commission, acting under Section 12 of the act to regulate commerce, to require carriers to make report of the various misdescriptions of freight detected by them. The petition referred to the rule in the Official Classification providing that "unless specifically otherwise provided in the classification, any package containing articles of more than one class will be charged at the rate for the highest classed article contained therein," such rule having been adopted to protect the carriers from loss of revenue through misdescription of freight. The petition also states that for some time the petitioner has been endeavoring to have the following rule substituted therefor in the Official Classification: "Unless otherwise specifically provided in the classification, any package containing articles of more than one class will be charged at the rate for the highest classed articles contained therein; provided, that if the actual weight of the articles of each class is shown on the bill of lading, each article will be charged at its weight and class rate, adding the weight of the box, case or crate to the weight of the heaviest article"; and that it is informed that such rule would probably be adopted by the carriers, were it not for the fact that it would open the door to a great increase in false billing, false classification, false weighing and false representation of the contents of the package on the part of dishonest shippers.

The petitioner sets forth that the present requirement works a great hardship on itself and other shippers who forward a number of small articles to the same consignee, and forces them either to pay unreasonable freight charges on the lower classes of articles, or else pay almost an equal amount for the separate boxing and forwarding of each individual shipment; and it was apparently believed that if all cases of false billing, misdescription of freight, etc., were reported to the Commission for prosecution, the practice would be so minimized that the carriers would be willing to make effective the regulation desired by the petitioner.

The petition was set down for hearing in Washington, D. C., on November 9. No formal opinion was issued by the Commission as a result of the hearing, but under date of November 13 a letter signed by the chairman was addressed to petitioner's counsel, in which the following statements were made:

"The Commission has considered the petition of Larkin Company, and the argument submitted by you in support of the same on the 9th instant.

"Without regard to the question of authority, the Commission is constrained to hold on other grounds that the general order asked for should not now be made. We are influenced to this conclusion mainly by the belief that the proposed requirement could not be, or at least would not be, complied with in such manner as to aid the ultimate purpose of the petitioner. The Commission has given some attention to the matter of under-billing and misdescription of package shipments and is measurably informed as to the extent and general character of these dishonest practices. Our investigations have also disclosed the methods adopted by the carriers for discovering false representations of this nature. These methods appear to be directed principally to the end of correcting the billing and collecting proper charges rather than to obtain legal proof of criminal misconduct. To report the instances of detected false billing without furnishing any evidence upon which the guilty parties could

be prosecuted would, in our judgment, accomplish little or nothing of practical value. We, therefore, decline to make the order requested because we are convinced that it would be ineffectual in its practical operation.

"The Commission is not indifferent to the misconduct which is again brought to its notice by this petition and will cheerfully take any action within its authority which is likely to be efficient to prevent these abuses, but it does not seem to us probable that any beneficial result would come from the order requested. If your client will furnish substantial proof of specific instances of wrongdoing, the Commission will promptly ask the Attorney General to prosecute and will co-operate by all available means to secure convictions.

"Your client also has the right to complain that Rule 15 (A) of the Official Classification is unreasonable and operates to impose unjust charges, and if such a complaint is made the carriers against which it is directed will be at once required to answer and the case heard at the earliest practicable date."

Class and Commodity Rates to Pecos Valley Points

A complaint has been filed with the Commission jointly by the Roswell Commercial Club, of Roswell, N. M.; the Carlsbad Commercial Club, of Carlsbad, N. M.; the Artesia Commercial Club, of Artesia, N. M., and the Chaves County Wool Growers' Association, against the Atchison, Topeka & Santa Fé Railway Company and its subsidiary lines, including the Pecos Valley Railroad, and the Chicago, Rock Island & Pacific Railway, Fort Worth & Denver City Railway, Colorado & Southern Railway, St. Louis & San Francisco Railroad, Missouri, Kansas & Texas Railway, and Missouri, Kansas & Texas Railway of Texas, alleging that the rates charged by the carriers from Mississippi and Missouri River crossings to the towns of Roswell, Hagerman, Artesia, Carlsbad, and adjacent points, on all classes and commodities of freight, are unjust and unreasonable of themselves, and particularly so as compared with the rates charged from the same points of shipment to Colorado common points and Texas common points.

The complaint points out that the towns in question are situated on or near the Pecos River in the eastern part of New Mexico; that the district in which the towns are located is called the Pecos Valley, and the chief industry is farming by means of irrigation in the valley, where water can be had, and stock raising by grazing the native prairies and mountains; that previously to the location and construction of the line of railroad through the valley, the entire country was practically unsettled, the only population being a few persons engaged in grazing live stock which could get water at the Pecos River or the streams coming in from the west, and the few persons who grew vegetables and fruit and some other farm crops on small irrigated places of no consequence, this because of the expense and difficulty of securing water, lumber, fencing, ranch supplies, and of reaching the railroad for outbound transportation of the product of the ranch. These conditions, which had retarded occupancy and use of the country principally because of its inaccessibility for want of transportation, began at once to disappear with the advent of the railroad, and the great grazing country tributary to the railroad began to fill up with livestock ranches, improvements necessary to that business were made, fences, built, wells bored, watering facilities provided, and the native grass utilized. This character of development continued westward as ranges farther east in Texas were fully occupied, until today, and for several years past, the grazing country in this section has been, and is, occupied with all the livestock which it is capable of supplying, being fit for no other purpose.

It is claimed that all of these developments, settlements and

investments, amounting to millions of dollars, have been and were made upon the assumption and belief that reasonable and fair railroad rates would be made and that the facilities and service by the railroads would keep pace with the necessities of the country. So long as the productions of farms, orchards and gardens were only sufficient to supply local demands a fair degree of prosperity was enjoyed by those in the business, but with more and more land brought under cultivation, outside markets had to be sought by rail for the surplus, and the high rate of freight complained of became such a burden as to absorb most of the profits, while the high rates on all sorts of class goods and commodities placed an undue burden on the whole community, including the merchants, manufacturers, producers and consumers.

It is stated that about the year 1901 the Pecos Valley Railroad was bought by the Atchison, Topeka & Santa Fé Railway Company, and since that time has been operated as a part of that system, connecting through Amarillo, Tex., to the north and east with the other lines of the Santa Fé system to Kansas City, Chicago, Denver and the Pacific Coast. There is no railroad eastward until the Texas & Pacific is reached—a distance of 150 miles or more, nor westward to the Chicago, Rock Island & Pacific, a distance of 100 miles or more. Thus the Santa Fé system has had ever since such purchase and absolute monopoly of all traffic tributary to the Pecos Valley and the towns named. The merchants, traders and dealers of these towns on all sorts of merchandise and supplies have been enabled only to establish trade with farmers and ranchmen in the country, who must buy from them, but are well prepared to extend their trade still further so as to reach and supply the trade which by reason of favorable location in point of distance ought to, and would trade with them, but for the excessive rates complained of. Undue burdens are claimed to be placed on those who must buy at these towns on all merchandise and supplies brought in. By reason of unjust rates, and indeed, prohibitive rates, complained of, farm crops and fruits often cannot be marketed at all, and in all cases the profits are cut to such a point or destroyed that business is undesirable; and they are unable to compete in markets with producers in Colorado, Texas and elsewhere, having more favorable rates.

It is alleged that when the line was built from Pecos the rates were made in combination with the T. & P. Railway, and the freight carried wholly by that route, but on being connected from Amarillo, about 1899, the freight was principally carried from that connection, being a shorter route from Kansas City, Kansas points, Colorado points, North Texas and Indian Territory points, Chicago, St. Louis and the East. But the rates from and to most, if not all, points north and east of Fort Worth and Amarillo were made on the combination through Pecos, Tex., by adding to the rate to Pecos either a local rate from Pecos to points on the Pecos Valley Railway or by an arbitrary one over the Pecos rate, which system, after the lines of railroad were completed to Amarillo, was an unjust and unreasonable system and subjected the said localities on the said line of railroad to an unreasonable prejudice and disadvantage; and that the rates, if reasonable theretofore, became unjust and unreasonable, in violation of the first section of the act to regulate commerce, and were in violation of the fourth section of the act prohibiting a greater charge for the shorter than for the longer distance.

The complainants allege that the bases of rates from Missouri River crossings, Mississippi River crossing, Chicago, Minneapolis and St. Paul, and from Fort Worth, Dallas, Galveston and similarly situated points, to Roswell, Hagerman, Artesia and Carlsbad, and other points on the Pecos Valley lines in New Mexico, should not be higher than the bases of rates from St. Louis, Chicago and Kansas City, and similar points, to Texas common points, Colorado common points, and places taking similar rates, because the business done is in competition with the business done in Texas and Colorado adjoining New Mexico on the east and north. A num-

ber of tables of rates are given, and a number of examples cited, showing the disparity in rates against the Pecos Valley points. The rates shown for a few of the leading commodities, in carloads, in cents per 100 pounds, are as follows:

	Rate to Roswell, etc.	Rate to Texas common points.	Rate to Col. common points.
Agricultural implements.....	\$0.95	\$0.70	\$0.82½
Beer	.75	.48	.45
Packing house products.....	.96	.60	.68½
Salt	.64	.26	.45
Tobacco, L. C. L.....	2.09	1.37	1.85
Apples	1.12	.58	.72
Potatoes	.80	.54	.52

The Commission is asked to fix just and reasonable rates for the transportation of all classes and commodities from and to the points named.

Refusal of Delaware, Lackawanna & Western Railroad to Make Delivery of Petroleum in Tank Cars to Its Brooklyn Terminal

A complaint has been filed with the Commission by the firm of Preston & Davis, of Brooklyn, N. Y., against the Delaware, Lackawanna & Western Railroad, alleging unjust discrimination in the handling of the complainant's shipments of petroleum and its products.

The complaint sets forth that for many years it was the practice of the complainant to ship petroleum oil in tank cars from points in Ohio and Pennsylvania over the Delaware, Lackawanna & Western Railroad to Brooklyn, the shipments being delivered at the Brooklyn terminal by floats from the Hoboken terminal; but by letter dated at Buffalo, N. Y., November 27, 1905, the Titusville Oil Works, the refiner and consignor of the oil, was notified by the railroad company that it had decided to discontinue the handling of oil in tank cars consigned to the complainants for Brooklyn terminal delivery. This embargo was subsequently withdrawn, but on October 15, 1906, an order issued by the general freight agent of the railroad company went into effect by which the railroad company refused, on and after that date, to deliver oil and oil products in tank cars at its Brooklyn terminal or at any other outside terminal at Brooklyn or New York. It is claimed that no valid reason exists why the railroad company should refuse shipments of oil for such delivery, and that as a result of such action the cost for the transportation of oil consigned to the complainants and brought to their place of business in Brooklyn has been greatly increased. It is further claimed that such action results in undue and unreasonable preference and advantage of the Standard Oil Company, works great hardship to the complainants, and is putting them to a financial loss which threatens eventually to ruin the business in which for many years they have been engaged.

The case has been set down for hearing in New York on November 30.

Refusal of Carriers to Permit Shipment of Hogs in Double-deck Cars

A complaint has been filed with the Commission by the firm of Frye & Bruhn, Inc., of Augusta, Me.; E. H. Stanton & Co., of Spokane, Wash., and the Merchants' Protective Association, of Seattle, Wash., against the Northern Pacific Railway and Chicago, Burlington & Quincy Railway, involving the refusal of these carriers to permit shipments of live hogs in double-deck cars.

The complaint states that the complainants, for the purpose of supplying the packing houses at Seattle, Wash., are compelled to buy large numbers of hogs in the States of Nebraska, Iowa, Minnesota, North Dakota and South Dakota, and at the markets on the Missouri River, which are shipped

over the lines of the defendant railway companies to Seattle, Wash., and adjacent points.

It is alleged that previous to 1897 the rates of freight on live hogs were so high as to prohibit their shipment to Seattle and Northern Pacific and Great Northern Coast terminals, but in the year 1897 the Northern Pacific Railway Company and the Chicago, Burlington & Quincy Railway Company established and thereafter shipped at a rate on hogs from St. Paul, Minn., and from Missouri River points, and intermediate points, to Seattle and to Pacific Coast terminals of the Northern Pacific Railway of \$136 per 33-foot car, \$148.36 per 36-foot car, single decks, and \$225 per 30-foot car, double decks, and \$261 per 36-foot car, double decks, which enabled the complainants to supply their packing house by the purchase of hogs at South St. Paul, and all Missouri River markets, Omaha, St. Joseph and Sioux City, as well as in the hog-producing district of the corn-belt States, and that the complainants shipped large numbers of hogs, running from 100 to 500 cars per annum, over the lines of railway mentioned to Seattle, and were thereby induced to increase the capacity of their packing house at Seattle and otherwise increase their trade in the products of hogs so shipped.

It is claimed that these rates remained in effect for about seven years, but in the latter part of the year 1903, without any sufficient reason, acting wholly in disregard of the rights of the complainants, the shippers, and the public, and in disregard of the duty which the railway companies owed to the public, they, by concerted action, combination and agreement with each other, canceled the said rates and since that time have refused to make or publish any rate of freight on double-deck carloads of hogs for shipment, or to ship the same over the said lines of railway to Seattle, and have unreasonably and unjustly advanced their rates in 1903 or 1904 to \$240 per 36-foot single-deck carload of hogs, which, in 1905, was reduced to \$170 per 36-foot car per single-deck carload, from St. Paul, Omaha, Sioux City, and points taking Missouri River rates, and from intermediate points on their lines in Iowa, Nebraska, and North and South Dakota to Seattle.

The complainants allege that the practice and method of shipping in double-deck cars is one which was inaugurated by the railroads themselves, when they first began the shipment of live hogs by rail, and that that practice has grown and continued, so that it is and had been for many years almost an universal practice; that it is reasonable and proper that it should be so, because it enables the loading of sufficient weight in a car to produce a proportionately reasonable amount of revenue freight to the proportionate dead weight of the car, and that it enables the more economical, and at the same time more profitable, shipment of live hogs than to require that they be shipped in single-deck carloads; that while it does, as a rule, in the practice of the railroads, enable the shippers and the public to secure a less rate of freight per hundred, still, at the same time, it has enabled the railroads to make more profit than they could make on a reasonable rate charged for shipping by single-deck carloads, and to do a larger business with a less number of cars.

The complainants allege that the State of Washington produces but few hogs, and that their trade in hogs and hog products must be almost wholly supplied from the States of Nebraska, Iowa, Minnesota, North Dakota and South Dakota and from livestock markets on the Missouri River, and that by reason of the advances in rates of the railroad companies the business of shipping live hogs from the said States to Seattle for the purpose of slaughtering and packing is practically prohibited, Frye & Bruhn shipping about 90 per cent. of the entire number shipped; and that this company would not be able to continue in such business except for the fact of having already established an extensive plant and business at Seattle for the purposes of such trade, which it is either compelled to supply by the payment of such unjust freight

rates or close down its packing house and go out of business and lose practically all the money it has invested and go into bankruptcy.

The Commission is asked to fix reasonable and just rates for such transportation, and prescribe proper rules, and to fix the amount of damages which the firm of Frye & Bruhn has suffered by the change in rates set forth.

Income and Expenditures of Operating Roads for the Year Ending June 30, 1906

The following statement gives figures for the principal items included in the forthcoming preliminary report of the Interstate Commerce Commission on the income account of railways in the United States for the year ending June 30, 1906. This report contains returns for railway companies operating 220,028.44 miles of line, including lines operated under trackage rights, or about 99 per cent. of the mileage that will be covered by the final report on the statistics of railways for the year.

The total gross earnings of the roads, as shown in the report under consideration were \$2,319,760,030, being equivalent to \$10,543 per mile. Passenger earnings were \$618,555,934, or \$2,811 per mile, and freight earnings, \$1,640,942,862, or \$7,458 per mile. Operating expenses were \$1,532,163,153, or \$6,963 per mile. The net earnings of the roads were \$787,596,877, being \$3,580 per mile, and nearly \$97,000,000 more than the corresponding amount reported for the previous year. The amount reported as income from sources other than operation was \$132,624,982. This amount includes a few duplications, due to the method of accounting followed by certain of the reporting carriers. Adding this amount to net earnings from operation gives \$920,221,859. Against this amount were charged as interest, rents, betterments, taxes, and miscellaneous items, the sum of \$590,386,554, and as dividends the sum of \$229,406,598, leaving a surplus for the year of \$100,428,707. The taxes paid during the year were \$68,903,288.

The final report for the year ending June 30, 1905, showed a surplus of \$89,043,490. The amount of dividends declared in 1906 was \$34,248,605 more than that shown for the dividends of practically the same roads in 1905. This preliminary report relates to operating roads only, and does not include the statement of any dividends paid by leased lines from the income they received as rent. The dividends declared by the subsidiary leased lines for the year 1905 were about \$35,750,000

Construction and Filing of Tariffs

Acting in accordance with the intention expressed in its Tariff Circular No. 3-A (which was set forth at length in the October number of **FREIGHT**), the Commission, on November 12, 13 and 14, held a further conference with representatives of various carriers and associations of carriers. At this conference the propositions stated in the tariff circular in relation to the construction and filing of tariffs were fully discussed by the Commission and the representatives of the carriers, and at the close of the conference it was stated that the matter would be taken under advisement by the Commission with a view to preparing a proper and reasonable order. The representatives of the carriers at the conference were:

C. M. Burt, general passenger agent, Boston & Maine Railroad.

W. J. Cannon, assistant general passenger agent, Chicago, Milwaukee & St. Paul Railway, representing Western lines.

C. F. Daly, passenger traffic manager, New York Central lines, representing the Trunk Line Committee.

F. C. Donald, representing roads in Central Passenger Association territory.

Hudson Fitch, general freight agent, Toledo & Ohio Cen-

tral Railway, representing roads in Central Freight Association.

W. G. Gardiner, chief clerk to passenger traffic manager of Southern Pacific Company.

L. Green, freight traffic manager, Southern Railway, representing Southeastern associations.

B. H. Payne, assistant general passenger and ticket agent, Missouri Pacific Railway, representing Western lines.

L. K. Kentfield, assistant general freight agent, New York, New Haven & Hartford Railroad, representing carriers in the Northeast.

F. A. Leland, assistant general freight agent, Missouri, Kansas & Texas Railway, representing freight committee of Western lines.

Joseph Richardson, chairman, Southeastern Passenger Association, representing Southeastern passenger interests.

George O. Somers, assistant to first vice-president Chicago, Burlington & Quincy Railway, representing Western lines.

Elmer H. Wood, general freight agent, Union Pacific Railroad, representing Western lines.

James Webster, general freight agent, New York Central & Hudson River Railroad, representing lines in Central Freight Association.

Commission to Codify the Laws

A recent news item from Washington is substantially as follows:

A Congressional reviewing commission is apparently unappreciative of the efforts of the commission that has been at work revising United States laws since the McKinley administration, and yesterday it was reported that the commission's entire work had been discarded. David K. Watson, who once went after the Standard while Attorney General of Ohio, is chairman of the commission whose product was thus rejected. A second member is John L. Lott, of Tiffin, and the third is W. D. Bynum, of Indianapolis.

The joint Congressional committee decided that the function of the commission was to codify, not to revise, the Federal statutes. There has been a suspicion that the revising done by this commission left the language of certain laws in better shape to sustain the administration's "trust busting" efforts than when Congress enacted them. Undoubtedly business and corporation lawyers have been fearful of just this thing.

The Congressional committee acquits the commission of having pointed and sharpened legal weapons for an attack on the trusts, but cautiously throws out the revision just the same. It is said that heads of various Government bureaus, under pretext of helping the commission to simplify certain laws, secured changes that increased administrative powers and generally widened the thorn hedge with which Congress has bounded the path of duty for these public servants. The commission is acquitted of having consciously helped this process. The Congressional committee credits this body with having been "worked" by the bureaucrats.

This commission to revise and codify the statutes has been engaged in a task of long standing. The work has dragged along for six or seven years. The commission might not have completed its labors at this date, but Congress fixed a date for it to report. It reported last winter. The Judiciary Committee found the report too heavy a task before adjournment, and a joint committee was appointed to sit during the summer and go over the report. Yesterday all the revision features were rejected.

The commission could have completed a codification in comparatively short time. It was the revising that prolonged the task.

Among the laws "revised" was the act to regulate commerce and subsequent statutes for the regulation of railroads.

BUREAU OF COMPLAINTS, GRIEVANCES AND INQUIRIES

(This department is maintained for the sole benefit of our readers. Subscribers are invited to ask any reasonable question about traffic matters and to submit complaints against common carriers.)

The Sums of Locals

To the Editor of Freight:

SIR—We would be pleased to have you advise us regarding interpretation of the ruling issued about a week ago by the Interstate Commerce Commission to the effect that the sum of the local rates can be used should they make a lower combination than the published through rate by the initial line publishing the local rates, the same to be effective one day from date of publication instead of the usual thirty days. This ruling to hold good until January 1, 1907, after which time the usual thirty days' notice will be required.

Does this ruling mean that such a tariff if issued would be effective for one day only, or does it mean that it would be in effect the next day and remain in effect until amended or superseded? We will be pleased to hear from you on the above at as early a date as possible.

Yours truly,
DEERE & WEBBER COMPANY,
By F. S. Pool.

MINNEAPOLIS, Minn., October 19, 1906.

INQUIRY DEERE & WEBBER COMPANY.

See reply to Western Stoneware Company.

Must Charge for Actual Weight

To the Editor of Freight:

As a subscriber to FREIGHT, we shall thank you for reply to the following:

Carload rates on shingles being based on a minimum weight of 30,000 pounds, and a car furnished which when loaded to full space capacity will weigh, say, 29,000 or less, shipper and railroad agent, after inspection, agreeing that space is entirely filled, and so noting on bill of lading, should not freight charges be based on actual weight and the ruling as to minimum of 30,000 pounds disregarded?

Yours very truly,
PACIFIC REDWOOD SHINGLE CO.,
W. H. NEWELL, General Agent.

SAN FRANCISCO, Cal., October 22, 1906.

INQUIRY PACIFIC REDWOOD SHINGLE COMPANY.

The carrier cannot collect freight charges for the transportation of goods which it does not transport. If the car, by the exercise of due diligence and careful loading, cannot contain the minimum weight provided for it, the carrier cannot collect an amount of freight greater than that determined by the weight actually transported and the rate per 100 pounds.

Liabie for \$50 Damages

To the Editor of Freight:

SIR—As a subscriber to FREIGHT I would appreciate an expression from your Legal Department as to the liability of the carriers in the following:

I have a claim with one of the express companies for damaged goods which were forwarded under the express company's receipt providing for limited liability of \$50.

Actual value of the shipment is \$300, which was damaged one-third, and claim filed for \$100. The express company contend that had shipment been lost or totally damaged they would only be liable for \$50 under their receipt, and in this instance are not liable

for an amount in excess of one-third of \$50, or the same proportion that the claim bears to total value. I believe as common carriers they are liable for full amount of damage, and certainly to the extent of \$50, as the consignee's loss exceeds that amount.

If consistent, kindly advise me your opinion in the premises; also refer me to any court decisions bearing on the case.

Thanking you for an early reply.

Yours truly,
A. A. WILD.
KANSAS CITY, Mo., October 12, 1906.

INQUIRY A. A. WILD.

The courts have usually held that an express company may limit its liability for loss and damage, and the usual amount to which their liability is limited is \$50; such contracts have been held valid by the courts. The contention of the express company in this case is a novel one. Whatever the value of the goods transported may be, the sum total of their liability is \$50; if the goods be entirely destroyed, that amount is all that can be collected; if the goods be damaged or injured to the extent of \$60, the shipper cannot claim more than \$50. The proposition to scale the damages, ascending to the proportion which the damages bear to the total value of the shipment, is not only novel, but unwarranted in law.

To the Editor of Freight:

SIR—Referring further to your letter of October 17, inclosing reply from your legal department relative to limited liability of express companies in case of partial loss.

I inclose for your information letter from the *Express Gazette*, Cincinnati, Ohio, under date of October 20, giving reference to decision of the Supreme Court of Indiana, which seems to confirm the express company's contention.

In view of the decision as outlined in their letter, do you think we could collect up to \$50 value on which shipment was forwarded?

Would be glad to hear from you further on the subject.

Yours truly,
A. A. WILD.
KANSAS CITY, Mo., October 23, 1906.

(Copy.)

THE EXPRESS GAZETTE.

CINCINNATI, October 20, 1906.

MR. ALFRED A. WILD,

Kansas City, Mo.:

DEAR SIR—Replying to your inquiry of the 11th, we beg to advise that the general ruling of the courts in the matter of damages for partial loss of shipments is laid down in the case of the United States Express Co. v. Joyce, decided by the Supreme Court of Indiana, and reported in 72 N. E. Rep. 865, and wherein the Court held as follows:

"Where there is a partial loss of shipment under a limited liability contract, the carrier will be liable for such a portion of the actual loss as the declared value in the shipping contract bears to the actual value, though the goods sell for the full declared value."

Trusting that this information will serve your purpose and thanking you for your subscription,

Very respectfully,

G. A. SPRAGUE,
Manager.

INQUIRY A. A. WILD.

The reply to the inquiry of October 12 was based

upon the language usually upon express receipts reading as follows: "The liability of this company is limited to \$50, unless a greater value is stated in this receipt."

The case to which reference is made in the second inquiry (U. S. Exp. Co. v. Joyce), decided by the Supreme Court of Indiana, is clearly distinguishable from the case before us. The shipment in controversy before the Supreme Court of Indiana was one of live stock, to which in many instances a different law applies. Further, the live stock receipt furnished by the express companies is entirely different from that used for what ordinarily falls within the term "goods." The Indiana company's contract provided that the carrier should be liable only to the extent of the actual damage, and which in no case should exceed the valuation. Partial loss occurred, but the horses sold for their full declared value, and the court rightfully held that the carrier was not exempt from liability, and that the shipper was entitled to recover such a proportion to the actual loss as the declared value of the shipment bore to the actual value. No such stipulation is to be found on the usual receipt for "goods." In the trial of the Indiana case the shipper, by reason of his actions, was estopped to show certain matters in the Appellate Court; had he not been so estopped the decision might possibly have been different. In short, there is scarcely a point of concurrence between the two cases.

We are still of the same opinion as formerly and do not think that under the language of the usual express receipt the carrier can claim that its liability shall depend upon the relation between the amount of damage and the actual value of the goods.

Must Follow Published Routes

To the Editor of Freight:

SIR—Availing ourselves of your offer to furnish subscribers advice on doubtful points under the new Hepburn bill, we would respectfully ask to be advised whether the clause in the above mentioned bill which states that in all cases the through published rate between two points must be applied is intended to apply from one given point to another via any route, providing there is more than one route between the points and the rate is only published via the one way. For instance, business moving from the South to a point east of Pittsburg is routed via Circleville and the Panhandle to Pittsburg, then via P. R. R., and the rate and tariff specifies this route. The rate from the same originating point to points on the Pennsylvania Company near Pittsburg apply via Columbus C. A. & C. and the Pennsylvania Company, and it is our opinion that business could travel to points on the P. R. R. east of Pittsburg via Columbus C. A. & C., Pennsylvania Company and the P. R. R. and be entitled to the published through rate via Circleville, Panhandle and P. R. R. under the mentioned clause in the rate bill.

Your attention and prompt reply to this request by letter will certainly be appreciated by

Yours very truly,

C. L. FLACCUS GLASS COMPANY.

PITTSBURG, November 9, 1906.

INQUIRY C. L. FLACCUS GLASS COMPANY.

The Interstate Commerce Law prohibits the ship-

ment of goods from point of origin to point of destination unless the rate applied shall be filed and published. If the rate applies only via a certain route the goods cannot well be routed via other lines and transaction conform to the law. If, however, a published rate be named from point of origin to point of destination with an election of routes, the election to be exercised by the shipper or carrier, we see no difficulty in this practice. We are of the opinion that the law contemplates that the rate from point of origin to point of destination shall apply over the routes specified in the tariff, but if no route be specified (a very rare occurrence) then over any reasonable, customary and usual route.

Demurrage on Tank Cars

To the Editor of Freight:

We receive your magazine regularly, but have never seen discussed in it the question which is bothering us at the present time; that is, the amount that can be charged for demurrage on tank cars, and by whom this should be collected. We would appreciate your advising us as fully as possible on this point at your early convenience.

With best wishes, we are,

Yours very truly,

PRATT & LAMBERT,

F. W. ROBINSON, Superintendent.

BUFFALO, N. Y., November 10, 1906.

INQUIRY PRATT & LAMBERT.

Demurrage, in the ordinary acceptance of the term, is supposed to pay for the use of tracks and use of car after free time. If the consignor or consignee is owner of the tracks as well as the car, no demurrage is enforced. If, however, the user of transportation facilities owns only the track or the car, demurrage is generally assessed. Car service charges are ordinarily paid to the delivering road, or at least the delivering road collects them and is supposed to transmit them to the car service association. In a Kentucky case an objection was made to demurrage charges upon the ground that under the demurrage rules a delivering road could make charges on cars that did not belong to it, but to other companies. In deciding this point the court said: "Each company uses the cars of the other roads which come upon its tracks, while in its possession, just as it does its own, and in point of law and in point of facts (sic) is the special owner or bailee of such car or cars until it is returned to them." Under this doctrine we think the delivering road has a special ownership in private cars and can collect demurrage for their use after the expiration of the free time. The payment which is to be made by the delivering carrier to the actual owner of the car ought to be the subject of a contract in connection with the contract for the use of same.

Sums of Locals

To the Editor of Freight:

SIR—We attach hereto copy of rules just received from the railway company, which rules are to take effect November 20, 1906, regarding rates made on combinations of locals.

Please advise if these rules are necessary to con-

form with the Interstate Commerce Law on these points. If they are, is there anything to prevent our reconsigning at the different junctions and thus get the advantage of the combination of locals, where lower than the through rates?

Your prompt reply will be much appreciated.

Yours truly,

WESTERN STONEWARE COMPANY,
C. A. Wise, Manager Traffic Department.
MONMOUTH, Ill., October 25, 1906.

(Copy.)

THROUGH RATES MADE ON COMBINATIONS OF LOCALS.

To Agents:

Where through rates are published to and from given points, such through rates must in all cases be used regardless of combinations which may be made either through the junction via which shipment moves or otherwise.

In cases of a commodity moving where no through commodity rate is published, but where class rates are in effect, the class rate must be applied regardless of the fact that combinations of the commodity rate may figure a lower through rate than the class rate.

In the absence of any published through rate, combination of local rates may be applied when the tariffs from which such combinations are taken have been regularly published and filed with the Interstate Commerce Commission.

INQUIRY WESTERN STONEWARE COMPANY OCTOBER 28.

The rules concerning rates made of combination of locals seems to be warranted by the present law. The Interstate Commerce Law provides that the published tariff shall be deemed conclusively to be the legal rate. Thus, where there is a published rate from A to C, that rate prevails notwithstanding the fact that the published rate from A to B and then from B to C may, in their sums, be less or greater than the rate from A to C. This has been the ruling of the courts and of the Interstate Commerce Commission, particularly since passage of the Elkins law in 1903.

The rule concerning the use of through published class rates as contradistinguished from the sum of local commodities seems also to be warranted under the law. That is to say, assume that brick is sixth class and there is a published class rate from A to C, but that there is a commodity rate on brick from A to B and also a commodity rate from B to C. The published class rate must prevail under the interpretation which has been placed upon the law.

The third ruling, that, in the absence of any published through rate, a combination of locals may be applied when the tariffs from which such combinations are taken have been regularly published and filed, seems to be in accord with the interpretation of the law by the Commission.

The use of the sums of locals recently proved a very hazardous experience for a shipper who used two locals, one of them being interstate and the other intrastate. The combination of the rates made a less rate than the through published tariff. The shipper was compelled to pay the through published rate, and upon suit brought to recover the alleged excess, the defendant carrier was victorious.

To the Editor of Freight:

SIR—We desire to thank you for the copy of report in the Hilton lumber case. We note that the Commission rules that where the published through rate between two points is more than the sum of locals, to that extent it is illegal, etc. How, then, can they now

rule that the sum of locals cannot be used when lower than the through rate, if their former ruling declares such through rate to be illegal. If a rate is illegal, how can it legally be used.

Kindly give us all the information possible on this subject, as we have to contend with the sum of locals considerably in our shipments.

Yours truly,

WESTERN STONEWARE COMPANY,
By C. S. Wise, Manager Traffic Department.
MONMOUTH, Ill., November 8, 1906.

INQUIRY WESTERN STONEWARE COMPANY NOVEMBER 23.

We scarcely agree with the interpretation which the inquirer has placed upon the decision of the Interstate Commerce Commission in the Hilton lumber case, decided April 10, 1901, and reported in IX I. C. C., page 17. We do not interpret this case to decide that the rates in effect were illegal in the sense that they could not be enforced, but that they were in contravention of the provisions of various sections of the Interstate Commerce Act.

Briefly, the facts were these: The rate on lumber from Wilmington, N. C., to Norfolk, Va. (an interstate rate) and the rate on lumber from Norfolk to New York (an interstate rate) added together were less than the through rate on lumber from Wilmington to Philadelphia. The reason for the several rates was alleged to be the competition of water carriers.

If we read the decision of the Commission correctly, this was a proceeding for the purpose of correcting rates on lumber in that they were in violation of the statute. The opinion shows that the "complainant alleges that defendant's rates on lumber in carloads from Wilmington, N. C., to Philadelphia, Jersey City and Boston are unreasonable in themselves and relatively unreasonable and wrongfully discriminating as compared with the rates from Norfolk to Philadelphia, Jersey City and Boston and in violation of the Act to Regulate Commerce." The complaint alleged a violation, therefore, of Section I of the Act to Regulate Commerce, by which it is provided that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared to be unlawful." The second section prohibits a carrier from charging, demanding, collecting or receiving from one person for doing him a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions more than from another; such action is denominated unjust discrimination, which is prohibited and declared to be unlawful. Section 3 prohibits undue or unreasonable preference or advantage, or the contrary, to persons, localities and particular descriptions of traffic. The Commission, as we read the opinion, decided that "rates from Wilmington to Philadelphia, Jersey City and Boston, to the extent that they exceed the sum of rates from Wilmington to Norfolk

or Portsmouth and from the latter points to the Northern destinations mentioned, are in violation of Section 3 of the statute" (36). That is to say, charging 1½ cents per 100 pounds more on the through rate from Wilmington to Philadelphia than the combined locals constitutes an undue or unreasonable preference or advantage, which, by Section 3, is denominated unlawful; similarly, there was an undue prejudice or advantage in the rate to Jersey City of 3½ cents and to Boston of one-half cent per 100 pounds. The Commission also said, "We think they violate the first section" (37). If the language of the opinion had been positive and it had been held that the rates violate the first section, it could but mean that these rates—that is to say, the through rates—are unjust and unreasonable.

"We are also of opinion," says the Commission, "that in charging a through rate which exceeds the sum of the locals by reason of the fact that the proportion from Portsmouth north exceeds the local from that point these carriers violate the second section" (37). That is to say, that in this case the action of the defendants constitutes unjust discrimination; this is prohibited and declared to be unlawful.

In short, this was a proceeding to test the alleged unreasonableness of the through rate; it was not a proceeding to test what rate should be applied to the particular shipment. By way of proof that the through rate was unreasonable, the locals were shown.

At the time of this decision the Elkins law had not been passed. By that law, as it was originally, "whenever any carrier filed with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to Regulate Commerce or acts amendatory thereto, or participates in any rate so filed or published, that rate as against such carrier, its officers or agents in any transaction begun under this act, shall be conclusively deemed to be the legal rate." So that, after the passage of the act of February 19, 1903, that rate must apply which has been duly filed and published, for any departure therefrom is made a violation of the law and punishable by fine.

As far as the question of the sum of locals is concerned, the present situation is practically as it was prior to the passage of the rate law of 1906, except as the latter has been amended. Section 1 still provides that every charge for transportation shall be just and reasonable. Sections 2 and 3 are unchanged; however, it is prohibited to transport property from one place to another unless the rate shall be duly filed and published; Section 1 of the Elkins law, while changed, still retains substantially the provision that the published rate shall be conclusively deemed to be the legal rate.

Much of the difficulty which is now being met concerning the discrepancies between sum of locals and through published rates will soon, doubtless, be eradicated. Where instances of this kind exist they will no doubt receive prompt correction at the hands of the carriers. The method by which this will be accom-

plished, while uncertain, can be foreseen. If, in any instance, the sum of the locals is less than the through rate the locals will be advanced; if, on the contrary, the sum of the locals exceeds the through rate, the through rate will be advanced.

We think the recent decision of the Commission concerning the relation between through rates and the sum of locals in accordance with the law, its previous decisions and the interpretation of the courts.

INQUIRY WESTERN STONEWARE COMPANY, NOVEMBER 19.

Since reply dated November 13 to inquiry concerning sum of locals and through rates, the Interstate Commerce Commission have issued Tariff Circular No. 6-A. This circular seems to coincide with the position taken in our reply. The circular referred to reads in part:

"Through Rates Which Exceed the Sum of Locals.—Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. The Commission announced in its Tariff Circular No. 5-A, of October 12, 1906, a rule permitting practically immediate reduction of a through rate which is higher than the sum of the locals between the same points. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through rate, which is higher than the sum of the locals between the same points, as *prima facie* unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate."

Charge for Unloading Cars

To the Editor of Freight:

SIR—Our members recently received a notice from the three transcontinental railways terminating in this city to the effect that hereafter it would be unlawful for them not to collect a charge of 20 cents a ton for loading and unloading cars; that is to say, taking goods out of and putting them into the car. On our inquiring what was meant by the expression, "it would be unlawful," and whether there was anything in the new rate law that occasioned this charge, we were informed that the railroads had filed this charge with the Interstate Commerce Commission, which would make it unlawful for them hereafter to fail to collect it.

What we desire to ask is, whether such a charge exists in other parts of the Union, whether it has recently been put into effect or whether it is of long standing, and whether you know of anything in the act that should occasion the establishing of such a charge.

Yours very truly,

ASSOCIATED JOBBERS OF LOS ANGELES,

C. D. Willard, Secretary.

LOS ANGELES, Cal., November 10, 1906.

INQUIRY ASSOCIATED JOBBERS OF LOS ANGELES.

Classifications usually provide that shippers will be required to load and unload car lot freight, and that the carrier will load and unload shipments in less than car lots. We believe Western trans-continental lines are no exception to this rule. The rule reads thus:

"Owners will be required to load and unload all freight in carloads."

A tariff of the Southern Pacific Railroad, No. 69 G, effective January 15, 1904, contains no particular rules relating to subjects incorporated in the tariff now about to be made effective. Merchandise tariff No. 76 G, effective November 26, 1906 (I. C. C., No. 2654), contains various rates, and provides for rules relating to the following subjects: The lowest charge; carload weights; diversions; demurrage, and storage. This tariff also contains the following provision: "Rates named herein do not include cost of loading and unloading. This company reserves the right to load and unload at a charge of 20 cents per ton of 2,000 pounds in addition to the charge for transportation." This provision upon its face does not show whether or not it applies to carload or less than carload shipments; it is assumed that it applies only to carload shipments, for the reason that this tariff bears a notation that it is to be used in connection with Western Classification, pp. 5 to 8.

We are unaware of any provision of the recent rate law which should cause the promulgation of such a notice. Certainly there is nothing mandatory in the statute which requires that the carrier shall charge for loading and unloading. If applicable solely to carload lots, some warrant for the rule can be found in the law, for it seems to be a proper interpretation of the act that carriers shall make no charge unless that charge shall be first filed and published in accordance with the provisions of the law.

We do not think such a charge is in force generally in the United States, and the only case which is brought to our attention is the one before us. We know nothing in the act which would compel such a charge being made, and that in all probability if the carrier for any reason should unload a car, it could not make a distinct charge for unloading without having previously filed and published the amount of such charge.

Abandonment of Operation

To the Editor of Freight:

SIR—Kindly advise me to whom I should complain relative to the railroad being closed from Perryville, Md., to Columbia, Pa., thus necessitating traveling via Philadelphia, Lancaster and Columbia, Pa., in order to get to Washingtonboro, Pa. The Pennsylvania Company has closed the road from Washingtonboro to Piqua in order to continue work of elevating road from one point to the other named above.

Thanking you in advance for desired information,
Very truly yours,

P. R. ROBERTS, Chemist.

WILMINGTON, Del., October 23, 1906.

INQUIRY P. R. ROBERTS.

It is the duty of a railroad having had a franchise from the State to construct the necessary tracks, and, having constructed the road, equip it with proper cars and motive power, to operate it. To abandon the operation of all or a part of the road subjects it to quo warranto proceedings or to mandamus proceedings. Upon

such proceedings being brought, a valid reason for temporary or permanent abandonment of a part of the road may be justified in the law.

The abandonment in this case is wholly within the State of Pennsylvania, being between Piqua and Washingtonboro. It is suggested to the inquirer that he file a complaint with the Attorney General of Pennsylvania, asking that he institute quo warranto proceedings, looking to the forfeiture of charter of the Philadelphia, Baltimore & Washington Railroad, this being the road which has a franchise to operate and which ought to operate the road in question.

If the writer and others similarly situated sustain damages by reason of the failure of the carrier to run its trains according to the published schedule, the measure of damages are those which are the direct and necessary result of the failure to run the published trains; this is, however, subject to the mixed question of law and fact whether or not there exists a valid reason for the temporary abandonment.

A Matter of Agreement

To the Editor of Freight:

SIR—Up to this time we have always succeeded in having the railway company return goods free of all charge to us on account of their being lost in transit or delivered too late for the requirements of the customer.

The Commerce Law advises us that hereafter the goods will not be returned only with charges to follow. What we desire to know is when we have the claim placed against the railroad company for such loss, and the goods returned to the factory with freight and storage charges, if we can reduce the claim to the amount of freight and storage which has accumulated. Any information you may see fit to give us on this subject will be greatly appreciated.

F. E. MYERS & BRO.

ASHLAND, Ohio, October 13, 1906.

P. S.—Your FREIGHT magazine is certainly a great addition to our freight department, and the information therein given is very valuable, and should be in the possession of every manufacturer in the country.

INQUIRY F. E. MYERS & BRO.

There is no obligation on the part of a shipper to take back from the carrier property which has been temporarily lost in transit, or which has been so long delayed by the carrier in transporting to destination that the time occupied by the transit may be denominated unreasonable. If the shipper, after making a claim for the value of the goods at the point of origin, choose to take back the property, he is at liberty to do so upon such terms and conditions as may be agreed upon by both the carrier and the shipper. Technically the measure of damages is the market price of the goods at the point of shipment and at the time intrusted to the carrier, and interest upon this amount. If the shipper shall see fit to accept less than this amount, he is entitled to do so, and, further, if he desire to take the goods back, the amount which he shall credit upon his claim is entirely a matter of agreement between him and the carrier.

STRICTLY FROM A LEGAL POINT OF VIEW

(This department contains a digest of every court decision, Federal and State, bearing on transportation matters that comes to hand during the month.)

Carriers' Liability Not Limited

The Supreme Court of Illinois, by a divided court, has held that where a carrier receives freight consigned to a point beyond its line it, by implication, agrees to transport goods to destination: and, further, that a limitation of the carrier's liability is not binding unless the shipper assents to such limitation, and the burden of proving such assent is upon the carrier. The case arose out of a shipment of horses from Council Bluffs, Ia., to Paris, Ill. In consequence of alleged neglect on the part of the railroad company by failing to properly feed and water the animals and moving on slow trains, twelve died, others became reduced in flesh, diseased and lessened in value. The usual live stock bill of lading was issued. In disposing of the case the court said:

Appellant's line east from Council Bluffs, Ia., terminated at St. Louis, and it is insisted by its counsel that the burden of proof was upon the shipper to show a special agreement on its part to transport the horses beyond its own line, without which the carrier's obligations were fully discharged when it delivered the freight in good condition to its connecting carrier. We think, even under this claim, the evidence fairly tended to prove that the contract was for a through shipment. The company, from its conduct, must have so understood it. When, however, a carrier receives freight to be transported, marked to a particular place, he is *prima facie* bound to carry and deliver at that place. By accepting the goods so marked he impliedly agrees so to do, and he ought to be answerable for the loss. (Illinois Central Railroad Co. v. Copeland, 24 Ill. 332; Illinois Central Railroad Co. v. Johnson, 34 Ill. 389; Illinois Central Railroad Co. v. Frankenberg, 54 Ill. 97.)

But it is said the agreement on its face limits the liability of the defendant to its own line. Even if it should be admitted that such is the fair construction of the bill of lading, it was still a question of fact for the jury and the Appellate Court whether or not that contract was assented to by the shipper. Whatever may be the rule in other jurisdictions, it is well settled in this state that whether the terms of a special agreement limiting the liability of the common carrier was understood, and entered into by the consignor and assented to by him, is a question of fact. The earlier cases so holding will be found cited in Chicago & Northwestern Railway Co. v. Simon, 160 Ill. 648. In that case we said: "By the adjudications of this court the rule is established, as a principle of the common law, that, where a carrier receives and accepts goods marked to a place beyond the terminus of its own line, its receipt for goods so marked is to be construed as a *prima facie* contract to carry and deliver at the point so marked. * * * Neither can the carrier limit his common law liability safely to deliver such property at the place to which the same is to be transported, by any stipulation or limitation expressed in the receipt given for such property. Starr & Co. Ann. St. c. 114, par. 96, and chapter 27, par. 1. By these two sections (the first adopted in 1872, and the second in 1874) the right to limit a common law duty in a receipt was prohibited. It has, however, been recognized by frequent decisions of this and other courts that a common law duty may be limited by express contract. * * * The rule that a limitation of a carrier's liability for safe carriage and delivery of freight beyond the terminus of the carrier's own line may be made by restrictions contained in that part of the bill of

lading which may constitute a contract has been recognized in this State. (Citing cases.) Where a contract limiting the liability of a carrier is contained in a bill of lading which in its entirety constitutes both a receipt and contract, the onus is on the carrier to show the restrictions of the common law liability were assented to by the consignor (Field v. Chicago & Rock Island Railroad Co., 71 Ill. 458; Boscowitz v. Adams Express Co., 93 Ill. 523); and whether there is such assent is a question of fact. The mere receiving the bill of lading without notice of the restrictions therein contained does not amount to an assent thereto"—citing cases. And in that case it was further held, whether the limitations in the bill of lading were assented to by the consignor was a question of fact determined by the Appellate and trial courts adversely to the appellant. To the same effect are Illinois Central Railroad Co. v. Carter, 165 Ill. 570, and Chicago & Alton Railroad Co. v. Davis, 159 Ill. 53. (Wabash Railroad Co. v. Thomas 78 N. E. 777.)

United States Demurrage Suit

The United States Circuit Court for New Jersey has rendered its decision upon a suit brought by the United States Shipping Company against the United States for demurrage alleged to have accrued by failure to promptly discharge a cargo on the steamer "Trunkby" at Cavite, P. I. The Court found, as a matter of fact, that in all probability the delay was occasioned in part by the character of the cargo, which could not be discharged in a haphazard way, and that in all probability the vessel was not detained the length of time claimed, but probably for a period of three days. The Court referred the matter to a master to ascertain the amount of damages. The Court, speaking of the amount of damages, said:

Damages by way of demurrage for three days will be allowed, and such allowance will cover, in my judgment, all that the petitioner can reasonably ask. Damages have been claimed for each day's delay equal to the charter price of the vessel per day. This, however, does not seem to be the true measure of damages. It should rather be the probable net earnings of the vessel during the period of delay. This can be ascertained by finding the gross freight which it would under ordinary circumstances in the course of its employment have earned, and deducting therefrom what it would have expended in earning it.

The Court held that the bill of lading and the whole transaction must be construed with direct reference to all the circumstances of the transaction. Interpreting a portion of the bill of lading and stating the law relating to demurrage of vessels, the Court said:

It will be observed that there is nothing in the bills of lading stipulating as to lay days or demurrage. The only stipulation relating to the discharge of the freight is that it is to be "received by the consignee immediately the vessel is ready to discharge, and continuously at all such hours as the custom house or port authorities may give permission for the ship to work, if necessary, to discharge into lighters at the risk and expense of the consignee." It is obvious that the word "continuously" is not to be considered as synonymous with incessantly or uninterruptedly. It would be impossible that the cargo should be discharged from the hold

of the vessel over its sides into lighters without cessation, as a stream of water can be made to flow from an open faucet. No such construction was put upon the word by the parties at the time, much less by the petitioner. Such a construction would have required the work to proceed by night and by day; but it appears by the petitioner's own testimony that the stevedores who were employed by the master of the vessel could not work at night. The clause means no more, then, than that the discharge should be reasonably continuous, considering the time, place and circumstances, the nature and character of the cargo, the situation of the vessel, and prevailing conditions generally. In the absence of express agreement as to the time for unloading, actions of this character are maintained upon the theory that there is an implied contract to discharge the cargo in a reasonable time, and what constitutes reasonable time depends upon the circumstances of the particular case, the facilities for discharge at the port where the discharge is to be made, the nature of the cargo, the weather, etc. In the case of *Empire Transportation Co. et al. v. Philadelphia & R. Coal & Iron Co.* (C. C. A.) 77 Fed. 919, 925, 23 C. C. A. 564, 35 L. R. A. 623, the court lays down certain propositions as follows:

"(1) Where the charter of a ship is silent as to the time of unloading and discharge, there is no implied agreement that the charterer will unload or discharge her in the customary time at the port of delivery, regardless of all extraordinary circumstances and unforeseen obstacles.

"(2) The implied contract is to unload and discharge her in such time as is reasonable, in view of all the existing facts and circumstances, ordinary and extraordinary, legitimately bearing upon that question at the time of her arrival and discharge.

"(3) This implied contract to discharge the vessel in a reasonable time is, in effect, a contract to discharge her with reasonable diligence.

"(4) The burden is on him who seeks to recover damages for the delay of a vessel under such a contract to prove that the charterer did not exercise reasonable diligence to discharge her, under the actual circumstances of the particular case.

"(5) Proof that the vessel was delayed in unloading beyond the customary time for unloading such cargoes at the port of her delivery throws upon the charterer the burden of excusing the delay by proof of the actual circumstances of the delivery and his reasonable diligence thereunder."

See, also, *Uren v. Hager* (D. C.) 95 Fed. 493; *Fish v. One Hundred and Fifty Tons of Brown Stone* (D. C.) 20 Fed. 201; *Morgan v. Garfield, etc., Co.* (D. C.) 113 Fed. 520; *Donnell v. Amoskeag Manfg. Co.*, 118 Fed. 10, 55 C. C. A. 178; *Burrill et al. v. Crossman et al.*, 130 Fed. 763, 65 C. C. A. 189; *Merritt & Chapman Derrick & Wrecking Co. v. Vogeman* (D. C.) 143 Fed. 142; *U. S. Shipping Co. v. U. S.*, 146 Fed. 914.

IMPORTANT DECISIONS IN BRIEF

A bill of lading contained the following condition: "If the word 'order' is written hereon, immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of the party to be notified of the arrival of the property, the surrender of this bill of lading properly indorsed shall be required before the delivery of the property at destination." And also contained the condition: "The shipper may elect to accept the conditions printed or written on the face and back hereof, and the reduced rates applying thereunder, or may, as provided below, require the carriage of the property at carrier's liability. If the shipper elect not to accept the said reduced rates and conditions, his failure to sign the ac-

ceptance clause provided will be accepted as notice of such intention, and the property will be at the carrier's liability, limited only as provided by common law, by the laws of the United States, and of the several States, in so far as they may apply. Property so carried will be charged twenty (20) per cent. higher (subject to a minimum increase of one (1) per cent. per hundred pounds) than if shipped subject to the conditions printed or written on the back and face thereof." Where under such circumstances the shipper failed to sign the conditions of the bill of lading, it was held that the first condition had no application to the shipment and the carrier was under no obligation to require the surrender of the bill of lading before delivery of the shipment at destination. The case grew out of a shipment of several carloads of cottonseed meal for export. On arrival at destination the consignee refused to pay the freight or surrender the bill of lading until the meal was delivered to a particular place at destination; this place was reached by means of a belt railway. Subsequently, however, after a lapse of about three or four weeks, the meal was delivered at the place designated. In the meantime the market had declined and suit was brought to recover for the decline in the market and the demurrage charges which had accrued. The trial court instructed the jury to find for the railway, which instruction was approved by the Appellate Court. (*George & Co. v. L. & N. R. Co.*, 40 Sou. 487.)

Where a consignor is liable to a carrier for freight charges the lien of the carrier is lost if it deliver the goods to the consignee as the agent of the consignor, although the consignee promised to retain the goods until the freight was paid. The case arose in the shipment of a quantity of produce to a cold storage company. The shipment was delivered and the superintendent of the storage company agreed he would do everything in his power to see that the property was not moved from the storage warehouse until the freight charges had been paid. The shipper having received a warehouse receipt for the goods, discounted the same with a bank. Subsequently, while the goods were in storage, the storage company was insolvent and went into the hands of a receiver. Later, the shipper having sold the goods to other parties, the vendee began moving the property from the warehouse of the storage company. The court in deciding the case said: "A carrier is entitled to retain the goods until his charges are paid, but if he see fit to deliver them to the owner before receiving payment, he thereby relinquishes his right to pursue the goods and must look for payment to the person liable for the freight charges. That this is a settled rule is abundantly shown by the authorities collected in the opinion of the learned vice chancellor who heard the case in the court below." (*Lembeck v. Jarvis T. C. S. Co.*, 63 Atl. 257.)

Where one has a private side track put in under the usual form of contract by which it was provided that the railroad might remove the track whenever it found it necessary for the accommodation of its business, and that if removed no claim for damages should be made, it was held that the decision of the railroad to remove the spur was final and evidence that it was not necessary so to do was immaterial, it not appearing that the railroad did not act in good faith. (*Whittemore v. N. Y., N. H. & H. R. R.*, 77 N. E. 717.)

Where there was delivered to a common carrier an article of ordinary character and value, and the shipper received a document in which it was stated that when the shipper fails to declare the value of the goods, he agrees that the value does not exceed \$50, it was held that the responsibility of the carrier for the actual value was not restricted unless the shipper had knowledge of the provision. (*Hayes vs. Adams Exp. Co.*, 62 Atl. 284.)

TRANSPORTATION TOPICS THROUGHOUT THE STATES

ALABAMA

At the meeting of the Alabama Lumber Manufacturers' Association, at Montgomery, the chief discussion of the day concerned the shortage of cars.

The Munson Steamship Company has decided to inaugurate a service between Mobile and Colon, Panama.

H. S. Kealhofer, manager of the Montgomery Freight Bureau, has written a very strong pamphlet, petitioning for an adjustment of rates from Ohio and Mississippi River crossings to Montgomery. This petition, dated November 3, is addressed to C. B. Compton, traffic manager, L. & N.; Haiden Miller, freight traffic manager, Mobile & Ohio, and L. Green, freight traffic manager, Southern Railway. It recites the efforts of Montgomery shippers since May 3, 1905, up to March 27, 1906, to secure an adjustment of the rates in question. It is not contended that the present rates are of themselves unreasonable, but that they are unreasonable because of their relative adjustment to other points in contiguous territory, and that reductions have been made to those points without giving the same and proper consideration to Montgomery. The contention is that a readjustment will enable Montgomery to meet, but not extinguish, competition with other points serving the same territory.

The petition gives a comparison of rates to Montgomery and Birmingham, showing decided discriminations in favor of Birmingham. Other instances of disparity are cited and the opinion advanced that the exhibits show a plain violation of the third section of the Interstate Commerce Act.

The petition states further that the situation has reached an acute and critical stage, and conditions have become well nigh intolerable to Montgomery merchants, and concludes:

"We ask that you consider carefully the following reductions from Ohio and Mississippi River crossings, that have been made to the distributing centers surrounding Montgomery since October 1, 1887, without corresponding changes hereto; except second class rate to Montgomery, which was only reduced in 1905, in line with arbitrary reduction of five cents on second class, Louisville to Atlanta:

	1	2	3	4	5	6
Albany, Ga.....	39	34	28	27	20	16
Anniston, Ala.....	10	15	10	8	7	6
Atlanta, Ga.....	9	5	3	5	4	5
Birmingham, Ala.....	19	23	20	16	12	11
Columbus, Ga.....	4	2	0	3	2	3
Eufaula, Ala.....	4	2	0	3	2	3
Macon, Ga.....	4	2	0	3	2	3
Mobile, Ala.....	2	2	2	2	2	2
Pensacola, Fla.....	2	2	2	2	2	2
Montgomery, Ala.....	0	5	0	0	0	0

"In conclusion we assure you that it is the earnest wish of all interests represented by this bureau to accomplish what is desired by an amicable co-operation with the transportation lines serving Montgomery. By reciprocity of advantages only can the most lasting and salutary results be obtained. By the granting of this petition we anticipate increasing our business, and expect you to find ample compensation in the expansion of your earnings. Otherwise it would be devoid of object.

"We ask the courtesy of an acknowl-

edgment, with advice of the probable time your final reply may be expected.

"Respectfully submitted,
"H. S. KEALHOFER,
Manager."

ARKANSAS

Fort Smith is jubilant over the fact that C. M. Hassell will build a railway to connect with Captain Reeves' Electric Line, and believes that the new combination will give Fort Smith practically the control of all the jobbing trade of the new State.

The railroads of the State have issued a new schedule of freight rates on oil, to comply with the order of the State Railway Commission, which reduces these rates 50 per cent.

CALIFORNIA

The Southern Pacific has acquired the Sunset Railroad, running from Kern Junction to Sunset, and began operating it November 15.

California fruit shippers are dissatisfied with the new Interstate Commerce Act. The complaint of the growers is based on the interference of the new law with a practice which has heretofore been common in the fruit trade. It has been the custom to bill fruit through from California to points in the East. Then, if a declining market was encountered, or if news came that there was strong demand in cities off from the main line, the cars of fruit would be diverted to such points. In case bad market conditions were encountered in these places, the fruit would be returned to the main line and the roads would make no charge for the back haul or for local rates. The freight would go through to its original destination at the through rate charge in the first place. Under the interpretation that is being given to the Hepburn law by some of the Eastern roads, this concession to fruit-growing interests will be held illegal and an effort will be made to collect charges on the side hauls of fruit as well as local charges. Fruit growers say that if this proposed innovation on the part of the roads is persevered in two effects will be produced. They think that fruit earnings will be pretty well cut to pieces by the accumulation of local charges on diverted shipments of fruit. They also believe that if the practice of diverting fruit cannot be persevered in, there will be much "bunching" of fruit at the end of the long haul, which would mean, according to one statement of the case, that "while New York, for instance, had an accumulation of California fruits, rotting, owing to the market being overstocked, Boston might be experiencing a famine in our fruits." As a result also of the situation thus created, the fruit trade would be at the mercy of dealers in small towns, since fruit could seldom, if ever, stand back-haul charges on top of a through rate or a local rate on a diversion of fruit from the diverting point to destination.

Alden Anderson, manager of the California Fruit Distributors, will take the matter up in practical form with the Commission in the near future.

The Santa Fé, Southern Pacific and San Pedro, Los Angeles & Salt Lake have given notice that at Pacific coast terminals a charge of 20 cents per ton will be made for unloading car-lot shipments, when they are not unloaded by the consignee. Competition with ocean

vessels brought about the practice by the railways of unloading at Los Angeles and San Francisco free of charge, and as this might be construed as discriminatory, it is to be discontinued.

CONNECTICUT

The Bridgeport Business Men's Association at a recent meeting complained of a lack of freight facilities and measures will be taken at once to acquaint the railroad officials of the seriousness of the situation.

A new freight yard is to be established by the New Haven road at Seymour.

The New Haven road is about to appoint a new line of officials to be known as general agents of the freight department. These general agents are to keep in close contact with every industry upon the company's lines located in their respective districts, the intention in a broad way being that every industry upon the line of this road shall be personally visited by a competent representative of this department at least once every two weeks. This is in order that the relations of the company to the industry shall be more intimate and the affairs more intelligently administered than is possible through any other method.

The ways and means for improving freight conditions was the object of a recent meeting of the Connecticut State Business Men's Association, held in Hartford. Many and varied complaints were made and the situation will be taken up with the railroads.

GEORGIA

Judge Newman, in the United States Court at Atlanta, reserved decision in the injunction suit brought by the Central of Georgia Railway against the State Railroad Commission, to prevent the enforcement of circular 316. The intent of circular 316 is to transfer the Central of Georgia from Class C to Class B, thereby involving a reduction of approximately 10 per cent. in its local freight rates. Attorney General Hart says that the whole usefulness of the commission depends upon the decision. The contention of the State is: That in 1890 the commission permitted the Central to advance its rates 10 per cent. in excess of the standard tariff, and in 1893, because of distressing financial conditions and the general depression of business, the commission authorized the railroad to make a further increase of 15 per cent. over the standard tariff, thus making a total advance of 25 per cent. allowed over the standard tariff; that the present physical and financial condition of the Central, and the general prosperity of the country, warrants the reduction which the enforcement of circular 316 will effect, and that it will put into effect rates higher than those allowed to be charged after the advance in rates in 1890. If circular 316 be not enforced, declares the State, the commission has reached the end of its usefulness and ought to go out of business.

The contention of the railway is: That the enforcement of the circular in question would reduce the gross income of the road \$38,604.88 annually, depriving it of a fair return upon the value of its property, and that it would amount to the taking of its property without due process of law, contrary to the provisions of both the State and United States constitutions; that the railroad is entitled to earn the legal rate of interest current in its locality upon its investment, and that the commission

has no right to determine what is a fair return upon the valuation of its property so long as the rates charged for services are reasonable and just.

Mayor Woodward, of Atlanta, is much annoyed at the injunction suit filed by the Georgia Railroad and Banking Company against the city of Atlanta and himself, as Mayor, asking that the city be restrained from closing up or obstructing in any way the outlets from the freight yards of the railroad into East Hunter street. The Mayor says that when the L. & N., which is the lessor of the Georgia Railroad, wants anything, they want it at once, but when the city wants them to do anything there is always delay.

The Central of Georgia Railroad, on December 22, will reduce rates on cotton goods to a scale that will be of considerable advantage to Columbus merchants.

The next meeting of the Atlanta Freight Bureau, which will be held December 11, will probably hear an interesting report from the committee on freight rates.

The quarterly meeting of the Southern Freight Classification Committee will begin at the Piedmont Hotel, Atlanta, on December 3.

The Georgia Supreme Court holds that the State law prohibiting the operation of freight trains on Sunday does not conflict with the Federal Constitution. In so doing, the higher court affirms the decision of the Superior Court of Habersham County, in imposing a fine of \$1,000 upon J. N. Seale, superintendent of transportation of the Southern Railway.

The first trip of the passenger steamer of the Brunswick Steamship Company between New York, Brunswick and Havana, will be made December 1, when the steamship "Brunswick" will sail from New York. The first freight steamer, the "Satilla," left New York November 10.

ILLINOIS

At the meeting of the Western mirror manufacturers, in Chicago, prices on all kinds of mirrors were advanced from 20 to 30 per cent., to take effect January 1. A member of the executive committee stated that the new rate law has advanced freight rates to such an extent that the cost of raw material has increased 100 per cent.

Chicago grain dealers and several of the big manufacturing concerns are trying to force railroads to abolish terminal switching charges, amounting on an average to \$3 a car. The Interstate Commerce Commission ruled that it was equivalent to granting secret rebates when railroads actually paid for switching cars and deducted the amount from the freight rate collected by them.

The Northwestern and St. Paul roads were the first to give notice that they would strictly adhere to the Commission's ruling. Traffic managers of the grain dealers and industrial concerns had a conference recently on the question. Much pressure will be brought to bear on the railroads.

The cases begun by the Illinois Freight Audit Co. against Illinois Central, Alton and other roads for large damages on account of alleged overcharges in freight rates, were continued in Justice Martin's court, in Chicago, by agreement of attorneys. The first case decided against the railroads will be carried to the Supreme Court.

According to an opinion handed down by Attorney General Stead, the Illinois

Railroad and Warehouse Commission has the power to regulate the schedule of rates to be charged by express companies.

The Illinois Freight Bureau is the name of the newest railway organization. It is being formed for the purpose of publishing a joint tariff of all roads on freight shipments wholly within the State. The Western trunk lines' committee will have jurisdiction over the new bureau.

Illinois manufacturers are alarmed over changes which it is said the railroads contemplate making in commodity rates the first of the year. Rumor has it that all commodity rates are to be taken out and that only Illinois maximum distance tariffs fixed by the commission are to be charged after January 1.

The Illinois Central has filed with the Interstate Commerce Commission a tariff of through rates on freight between points on its line and those of the Chicago & Milwaukee Electric Railroad. This is the first tariff ever published showing an agreement between a steam and an electric road to interchange freight and make through rates.

An effort will be made in the next Legislature to have a reciprocal demurrage bill enacted.

The Central Freight Association lines have agreed to continue until January 1, 1907, the practice of stopping cars to complete loading or for partial unloading. In other words, they have postponed until January 1 the application of the new rule prohibiting stopping of cars for the purposes named, which was to have taken effect November 1.

It is expected that the North American Express Company, which was incorporated in Maine several weeks ago, with a capital of \$25,000,000, will begin business on the Rock Island-Frisco system within the next year.

INDIANA

Indianapolis mercantile interests are somewhat perplexed over the recommendation made by Mr. Baxter, special counsel of the Interstate Commerce Commission, to the effect that the practice of railroad credits be abolished. Mr. Baxter says that a freight traffic official has stated that at certain points the railroads extend daily and weekly credit to certain shippers, but do not extend such credit to the public generally. In his opinion, therefore, the railroad runs the risk of being charged with giving an undue or unreasonable preference or advantage to the shipper to whom it extends such courtesies and he therefore advises that the practice be discontinued.

The Indianapolis Freight Bureau is conducting a vigorous campaign for more equitable shipping rates out of Indianapolis. A statement of exhibits showing the urgent need of radical readjustments in Indianapolis rates and transportation conditions, have been presented to the railroads for prompt action in granting the relief asked for.

"What we wish to get," says Joseph Keavy, commissioner of the bureau and member ex-officio of the shippers' committee, "is an equalization of the rates now in use on the various roads, and we wish to stop the discrimination against Indianapolis. It is only in the cases where two railroads parallel that their rates are uniform. When one road branches off in another direction, up go the rates. The lines that parallel must meet each other's rates in order to get the business, but when they do not parallel they charge exorbitant rates.

LOUISIANA

A new railroad through the lumber districts from Morgan City will be built to New Orleans, about 100 miles in length, by C. R. Ash.

The Queen & Crescent is receiving new equipment and has ordered more.

The discovery in New Orleans that cotton could be shipped from Mississippi Valley points contiguous to New Orleans and properly in New Orleans export territory cheaper via Boston than by New Orleans to Liverpool has caused considerable excitement among New Orleans shippers and railroad men, and complaint is being heard on all sides that steamship men are discriminating against that port in the matter of rates.

MAINE

Important reductions in the passenger and freight rates on the Maine Central Railroad will be made to take effect January 1, 1907, as soon as under the provisions of the Interstate Commerce law such changes can be made. The company's passenger tariffs for single tickets will be put upon the basis of 2½ cents a mile between all stations upon its lines south and east of Bartlett, N. H., which includes the lines of the road in Maine and a part of the Mountain division in New Hampshire, and 3 cents a mile on all stations north and west of Bartlett, N. H. Its freight tariffs on traffic passing to and fro between points west of Niagara Falls and stations between Brunswick, Farmington, Waterville, Skowhegan, Belfast, Dover and Foxcroft, Bangor, Bucksport, Mount Desert Ferry and Old Town and all intermediate points will be put upon the same basis as rates to and from the same western territory and Rockland.

MASSACHUSETTS

James W. Van Cleave, president of the National Association of Manufacturers, delivered an address on the tariff before the Home Market Club, Boston, on November 20.

Boston business men are trying to consolidate interests and bring pressure to bear on the railroads to furnish better freight facilities.

MICHIGAN

Bay City and Saginaw Boards of Trade have formed an alliance to take up the matter of freight rates with the railroads. It will conduct a vigorous fight for equitable freight rates for Saginaw Valley points.

"Give us cars immediately or we will be compelled to close down our plants," says the Saginaw Valley Lumber Dealers' Association in resolutions and an appeal to the Pere Marquette, Michigan Central and other railroads entering Saginaw. The association has more than a score of members, including the leading lumbermen in Michigan. They employ 6,000 men in Saginaw and Bay City.

MINNESOTA

The Great Northern has issued its new freight tariff, announcing changes in merchandise rates. They affect traffic not only in Minnesota, but in Wisconsin, North and South Dakota, and Nebraska. Not wishing abrupt changes in rates at the State boundary, the company has made reductions in the neighboring States, grading the rates to meet the rates in Minnesota.

The new rates include a reduction on merchandise hauled from Duluth to Sioux City, Ia., the reduction being 3 cents on first class, gradually diminishing for lower classes. This reduction is the result of considerable negotiation be-

tween the Great Northern and the roads hauling merchandise from Chicago to Sioux City. For a long time the rate on merchandise from Duluth to Sioux City has been exactly the same as the rate from Chicago to Sioux City, this arrangement being made on the theory that the Duluth and Chicago jobbers thus were placed on an equal footing.

The Shippers' Association of Minnesota does not agree with Governor Johnson that no more railroad legislation is needed.

Indictments in fourteen cases were handed to Judge Lochren in the United States District Court, at Minneapolis, covering the giving of rebates by certain railroads and the receiving of the same by grain firms and individuals. The list of railways indicted follows:

The Great Northern Railroad Company, four indictments, about seven; five counts; the Chicago, St. Paul, Minneapolis & Omaha Railway, one indictment, fifty counts; Wisconsin Central Railway, one indictment, seventeen counts; Minneapolis & St. Louis Railway, one indictment, five counts.

The indictments against the railroads charge the giving of rebates. Under the head of receiving rebates the following true bills were returned:

W. P. Devereaux Company, McCaull-Dinsmore Company, of Minneapolis; Ames Brooks Company, of Duluth; the Duluth Milling Company.

In most of the instances the railroads are charged with absorbing elevator charges, though in a few cases the return of freight paid is alleged.

Relative to the indictments, the Wisconsin Central issued the following statement:

"It is a case of reform run riot. The officials of the road have been indicted for allowing an elevator company one-half cent per bushel transfer charges on grain.

"The necessity for this arose from the fact that the Wisconsin Central road has no elevator of its own at Minneapolis, while all of its competitors have. The other roads make no charge for passing grain through their elevators. For this reason it was necessary for the Wisconsin Central road, in order to meet this competition, to allow $\frac{1}{2}$ cent per bushel for transferring grain from cars of the Great Northern, Northern Pacific, 'Soo' and other lines to the cars of the Wisconsin Central. The $\frac{1}{2}$ cent per bushel elevation is the regular allowance as established by the Minneapolis Chamber of Commerce.

"In other words, the Central, being without conveniences of its own for the handling of grain, had to 'hire' the service done. The technical point is made by the District Attorney, in bringing the indictments, that this allowance should have been published by the road so that everybody might have been aware of it. As a matter of fact, the allowance was made indiscriminately to any elevator company that performed the service, and there was no intention or desire to favor any particular elevator."

MISSOURI

The Rock Island will build a \$100,000 freight station at St. Joseph.

Indictments were returned by the Federal Grand Jury against Davis H. Kresky, of Kansas City, a freight broker, charged with conspiracy to violate the Interstate Commerce act in securing concessions on shipments of flour sold by the J. A. Howard Mill Company, of Wichita, Kan., to A. F. Roberts & Co., of New York, for export, and shipped

over the Missouri Pacific, Alton, Milwaukee and Nickel Plate lines; against W. A. McGowan, agent at Kansas City of the Nickel Plate Fast Freight line, for conspiring with Kresky, and against Henry S. Hartley, of Kansas City, a dealer in cottonseed meal, charged with accepting commissions and rebates on shipments over the St. Louis & San Francisco and the Chicago, Burlington & Quincy railroads.

Kresky was indicted in Kansas City on December 15, 1905, jointly with the Alton and the Milwaukee, on a charge similar to that just returned, but the case did not hold. The recent indictments returned against Kresky and McGowan were on evidence worked up by H. B. Duncan, of Chicago, for the Interstate Commerce Commission.

Kresky, McGowan and Hartley were arrested and released on \$5,000 bond each. Kresky and McGowan are liable to a fine of from \$1,000 to \$10,000 and imprisonment not exceeding two years, or both the fine and imprisonment. Hartley is liable to fine of from \$1,000 to \$20,000.

NEBRASKA

The Chicago & Northwestern Railroad has commenced the construction of a new freight depot at Omaha to cost \$600,000.

The Omaha Grain Exchange announced in a formal set of resolutions the belief that the Omaha grain market is discriminated against by the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, the Great Northern, the Chicago, Burlington & Quincy, the Union Pacific, the St. Joseph & Grand Island and the Missouri Pacific railways in favor of Chicago, Kansas City and Minneapolis in the matter of switching, reconsignment and other charges.

NEW HAMPSHIRE

Business men in Concord and in various parts of the State will endeavor to get legislation at the next session of the Legislature regulating express rates in the State. Considerable indignation has been expressed here in the recent raise in rates between this city and Boston. Until recently the rate was 40 cents a hundred, while that from Hooksett, Saco and other places south was 60 cents. Upon the strength of the recent decision of the Interstate Commerce Commission against discrimination, the American Express Co. has raised the rate from Concord to 60 cents.

It is now proposed to provide by statute for a State Commission to regulate rates, and also to place a tax upon the franchises of the express companies. No such tax has ever been assessed in this State, and until the constitutional convention of 1903 was held unconstitutional.

NEW JERSEY

Fifty steel-underframe stock cars of thirty tons' capacity have been received by the Central Railroad of New Jersey from the Middletown Car Works.

If the plans of County Supervisor H. Otto Wittmann carry, the Interstate Commerce Commission will be requested to force the West Shore Ferry Company to lower the ferriage from five cents to three cents, and to no longer discriminate against the residents of Hudson County in favor of non-resident commuters.

At a recent meeting of the New York & New Jersey Car Service Association, the following demands were made by the Newark Board of Trade:

1. The penalizing of the carrier for unreasonable detention of goods, and the submission to consignee by the delivering carrier of a statement showing the date of delivery to each carrier and the distance traversed by the shipment.

2. The removal of the right of lien for car service charges.

3. The reduction of the demurrage charge to a rate not exceeding 10 per cent. per year of the value of the car.

4. The extension of the free time for unloading to ninety-six hours.

5. The compulsory delivery of cars and carload lots at specific sidings, and particularly upon private switches, at the request of consignor or consignee, regardless of disputes or differences in other matters.

Testifying in a suit of the Newark Stock Yards Company against the Delaware, Lackawanna & Western Railroad Company for \$50,000 for yardage alleged to be due, Burns D. Caldwell, vice-president of the D. L. & W., stated that he had had a conversation with James C. Bathgate, an officer of the stock yards company, in which Bathgate said that if the railroad refused to charge for yardage, Swift & Co., one of the largest shippers, would stop shipments over the road. The witness said the big beef shippers, including Swift & Co., practically owned the stock yards. Caldwell said that notwithstanding a contrary view taken by railroads generally, the payment of such charges would be a rebate and in violation of law.

Despite the threat, said Caldwell, his company did not change its position and soon Swift & Co. discontinued shipments by way of the Lackawanna. This resulted in a yearly loss of \$100,000 to the railroad company.

NEW YORK

Arguments were recently resumed in United States Circuit Court on demurrers of the New York Central, Pennsylvania and allied railroads, to indictments charging them with giving rebates and concessions to the Standard Oil Company on shipments of oil from Olean, N. Y., to Rutland, Vt.

Attorney Frank Rumsey, for the Pennsylvania, claimed there had been no violation of the Elkins Act, as the 16-cent rate and the 19-cent rate were over different routes. The 19-cent rate had existed for years, Mr. Rumsey argued, and if there had been any violation it was in the neglect of the railroads to publish both rates.

In reply, United States District Attorney Brown argued that the general public did not know of the existence of two rates, which the Standard was benefiting by, and claimed it had only come to light recently. A shipper was simply told that the rate from Olean to Rutland was 19 cents a hundred pounds.

On conclusion of the argument it was announced that a decision would be handed down after briefs were submitted.

A jury of the United States Circuit Court, Criminal Branch, found the American Sugar Refining Company guilty of receiving about \$26,000 in rebates in defiance of the provisions of the Elkins act. On the charge of giving these rebates the New York Central Railroad was convicted.

Judge Holt imposed a fine of \$18,000 on the New York Central, and the Sugar Trust was similarly fined. This case attracted considerable attention owing to the fact that Joseph H. Choate and A. B. Parker were among counsel for the defendant.

OHIO

John D. Rockefeller, several directors and an alleged subsidiary company of the Standard Oil Company, of New Jersey, were indicted by the Grand Jury of Hancock County. The charge is a violation of the Valentine Anti-Trust act. The dates named in the indictment during which it is alleged the men and the corporation continued to contract the oil production and fix prices are on and after July 7, 1906.

A revision in the freight rates of the Indian, Columbus and Eastern railway system has been announced, at the office of A. W. Jordon, general passenger agent, Columbus. The rates were cut on the Eastern division as far as Zanesville, about 20 per cent., and on the Western division, as far as Indianapolis, were lowered so that they are the same as the steam roads.

The Cleveland, Akron & Columbus Railroad will spend \$500,000 for improvements at Akron.

The Southern Railway seems to have clashed with the L. & N. over the question of routing business from Ohio territory to the South.

Largely through the efforts of Commissioner E. E. Williamson, of the Receivers' and Shippers' Association, of Cincinnati, fruit and produce traders will not be required to sign release notations on bills of lading for less than car lot shipments.

The Tri-State Live Stock Dealers' Association, of Ohio, Indiana and Michigan, will file a bill of complaint alleging discrimination in freight rates, with the Interstate Commerce Commission.

Following their complaint against forty railroads in Ohio, charging rate discrimination, the independent oil refiners expect to lodge complaints in all other States that have railroad commissions.

"We have papers ready for filing with the Illinois Commission," said C. D. Chamberlain, secretary of the National Petroleum Association. "We are working on a complaint to be filed in Wisconsin. Instances are given there in which railroads charge distributing rates 235 per cent. higher than carload rates. We are to have a hearing before the Indiana Commission December 1."

Concessions in switching charges have been made to the extensive shipping interests of Cincinnati by the various railroads entering Cincinnati.

OKLAHOMA

An injunction suit has been filed with the clerk of the district court of Logan County against the Chicago, Rock Island and Pacific Railroad Company by Attorney General Cromwell and Special Attorney Charles West on behalf of the Territory of Oklahoma.

The petition recites that the Choctaw, Oklahoma and Gulf Railroad Company, owned and operated by the Rock Island, is charging higher rates for the transportation of coal than is authorized by law.

As a result of the complaint recently filed at Washington with the Interstate Commerce Commission by Attorney General Cromwell, of Oklahoma, a special agent of the Commission, John Ledgerwood, of Des Moines, Ia., was here recently making a preliminary investigation of freight rate conditions in Oklahoma. He is a member of the Iowa State Board of Agriculture, and himself a prominent shipper. His visit here was simply to acquaint himself with the general conditions upon which Cromwell's complaint was based and no detailed investigation of the violations alleged was

attempted at this time. He will return here in the near future to make a detailed investigation. As his work is altogether with interstate traffic, he will take up also to a certain extent conditions in Kansas, Texas, Arkansas and New Mexico.

OREGON

Southern Oregon people are demanding lower freight rates from the Southern Pacific Railroad Company. They say the existing rates are not only too high, but are not fairly classified.

That the car shortage is worse, instead of better; that Willamette Valley mills, as well as others, are discriminated against in order that certain mills may get much more than their proportion of cars, and that rank favoritism is shown some specific mills, is charged by saw-mill operators, who not only are becoming thoroughly discouraged over the outlook, but are inclined to organize for the purpose of securing legislation to protect their interests from utter annihilation.

PENNSYLVANIA

Philadelphia City Councils has opened war on the Pennsylvania Railroad. The Select Council unanimously adopted a resolution recommended by the law committee, directing the termination of the lease of the Dock street wharf property to the railroad company. The resolution further directs that steps be taken to recover damages from the railroad.

A warehouse for the handling and storage of general merchandise has been erected in the Point district, at Third street and Duquesne way, Pittsburg, in connection with the new Duquesne freight station, and is ready for business.

The warehouse will be operated by the Duquesne Warehouse Co., under lease from the Pennsylvania Railroad.

Winter risks of delay on the main line of the Pennsylvania Railroad east of Pittsburg have been largely reduced, now that the company's improvements at Hollidaysburg are about completed. At this point a vast freight yard with 55 miles of track has been established in connection with the Pennsylvania's new low-grade freight line. If the main line of this mountain trouble-spot should at any time be obstructed, it will be possible to divert all traffic without loss of time by way of Hollidaysburg.

The Pennsylvania Railroad has increased wages of all permanent employees receiving less than \$200 a month 10 per cent., to take effect December 1. The increase applies to about 185,000 men and involves an increased annual outlay of about \$12,000,000.

The Pennsylvania Railroad will build 25 more large freight engines at the company's shops at Juniata.

The Commercial Exchange will decline to accept the compromise offer made to that organization by the Pennsylvania Railroad, in answer to an urgent request for the erection of a large grain elevator at the foot of Federal street.

Never in the history of that city, according to a Pittsburg special, has the freight and passenger traffic in and out of the Pittsburg harbor been as heavy as at the present time due largely to a shortage of cars on all railroads which are unable to handle the traffic.

To facilitate the adjusting and remedying of complaints of local manufacturers and business men of delays and losses in the rail transportation of their freight, the Merchants and Travelers' Association, of Philadelphia, have established a Freight Complaint Bureau.

with Secretary C. W. Summerfield at its head.

The Trades League and the Merchants' and Travelers' Association, of Philadelphia, are urging the early construction of the Chesapeake and Delaware Canal as a free waterway for deep-draft vessels, and at a recent meeting adopted this resolution:

"Resolved, That this association pledges itself to advocate and forward by all lawful means within its power the enactment by the Congress of the United States of an act to empower the Interstate Commerce Commission to issue an order to all railroad companies requiring a time limit for delivery of all shipments, such time limit to be based on length of haul, the railroads to be subject to a penalty for each twenty-four hours' delay in delivery beyond the time prescribed."

TENNESSEE

Car shortage is causing mills to shut down in various parts of the State.

Alleged failure to deliver goods to customers in proper season was the basis of a suit in chancery brought in Chattanooga against the Southern Railway Company. The complainant is the Dr. Granger Medicine Company, owned by B. F. Fritts and Kate F. Wiehl. According to a bill filed with Clerk and Master Sam Erwin, the railroad company has failed to promptly deliver a long list of goods shipped by complainant to various buyers. The value of goods thus alleged to have been carelessly handled, together with interest on such valuation, is placed in the bill at \$1,577.62.

TEXAS

It is stated that a bill will be introduced in the next legislature to permit the consolidation of all so-called Yoakum properties in the State.

The case of the railroads against the State authorities, involving the constitutionality of the Love railroad gross receipt tax law, was decided in favor of the State by the Supreme Court.

It is expected that a freight bureau will be organized in Dallas very shortly.

It is learned, upon the highest authority, that the recent action of the railroad commission in issuing an order to investigate and take charge of Pullman service and rates in this State has put a stop to negotiations which were progressing for the establishment in the South—preferably in Texas—of Pullman shops for the repair of sleeping cars that become in bad shape in service.

VIRGINIA

The American Freight Revising Bureau has been incorporated at Richmond. Incorporators: J. Claffin, president; I. E. Campbell, G. H. Winston, all of Richmond. Capital stock: Maximum, \$50,000; minimum, \$25,000. Objects and purposes: To supervise, examine, audit, revise and certify to and guarantee the correctness of freight and express rates, charges and classifications, etc., to audit and guarantee the correctness of accounts, books, etc.

The narrow gauge line between Emporia and Claremont, the last of the narrow gauge branches of the Southern system, is to be converted into a standard gauge within the next eight months.

The wage demands of the machinists of the Southern Railroad were finally submitted to arbitration by H. B. Spencer, general manager of the Southern Railway, and James O'Connell, president of the International Association of Machinists.

T. Payton Giles and John Donnan expect soon to have behind them 200,000 business houses in their fight for the faster movement of freights.

The Chesapeake & Ohio will spend \$200,000 for better terminal facilities at Richmond.

WASHINGTON

The Northern Pacific will build a \$7,000 freight depot at Spokane.

A supplemental freight tariff to be effective December 1 over the Oregon Railroad & Navigation Company, Northern Pacific, Great Northern and Washington & Columbia River railroads in connection with the Spokane Falls & Northern and the Nelson & Fort Sheppard, has been issued. An important change in the rules applies to dunnage allowance for stakes, strips and supports used in the transportation of forest products, principally poles. Heretofore a weight charge has been made on these articles which has been from 40 to 60 cents a hundred pounds on each bound shipment and from 5 to 25 cents locally. By the new rules 500 pounds per car will be allowed free on shipments on either flat or gondola cars. Where two or more cars are used for extra length poles, 500 pounds will be allowed for each. In no case, however, will less than the minimum weight specified in the tariff be charged.

The Portland-Seattle v. Spokane war is on again in earnest.

PERSONAL MENTION

BARHAM.—Charles Barham has been made general freight agent of the Nashville, Chattanooga & St. Louis.

McCONNELL.—J. W. McConnell has been appointed traveling freight agent of the Great Northern at Buffalo.

NEWMAN.—William Newman has been appointed second assistant general freight agent of the New York Central.

RADLEY.—H. P. Radley has been named general freight and passenger agent of the Illinois Southern in Chicago.

SIGNER.—Fred Signer succeeds Burton Johnson as general freight agent of the Wisconsin Central.

SMITH.—Eugene M. Smith has been appointed assistant general freight agent of the Nashville, Chattanooga & St. Louis.

SPENCER.—H. B. Spencer has been appointed vice president of the Southern Railway and has been placed in charge of the construction and purchasing departments.

WOODWARD.—George E. Woodward has been made general freight agent of the New York, New Haven & Hartford.

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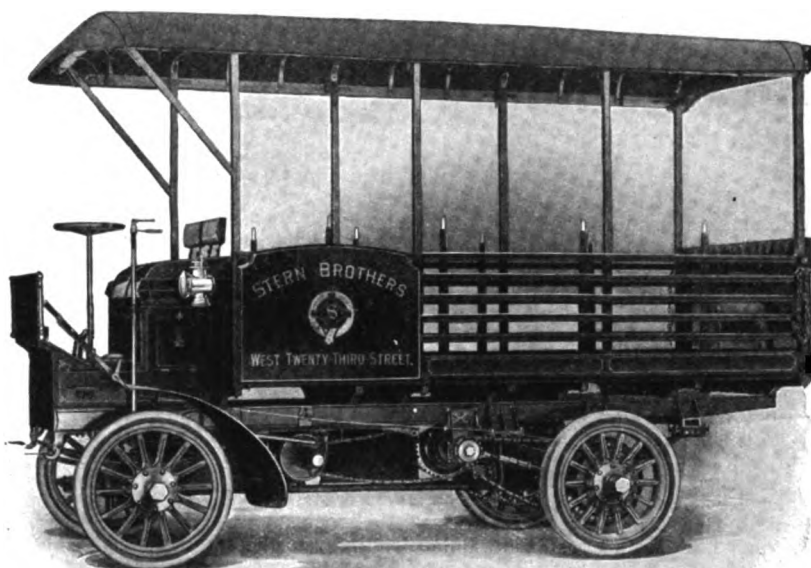
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HEARINGS AND RULINGS BEFORE STATE COMMISSIONS

ALABAMA

Two reports from the Alabama Railroad Commission have been filed with Governor Jelks. One is signed by W. P. Tunstall and W. T. Sanders, the other is signed by B. B. Comer, Governor-elect of the State.

The dissenting report, filed by Mr. Comer, is lengthy and is made up mainly of recommendations. For this reason the dissenting report of Mr. Comer is of decided interest. It undoubtedly forecasts his message, as Governor, to the next Legislature. Briefly Mr. Comer's recommendations are as follows:

First, power to make railroads put agents at depots; second, maximum rate not to exceed present rate; third, prompt adjustment of claims; fourth, must be no discrimination against shippers; fifth, supervision of the carrier service on the waterways; sixth, before increasing capital stock railroads must first have it approved by railroad commission; seventh, no stock to be issued for improvements, without approval of railroad commission; eighth, agents of railroads be examined under oath as to actual cost of building roads, etc.; ninth, that express, telephone, telegraph and other public service corporations shall be under jurisdiction of the railroad commission.

These last named corporations Mr. Comer says are "unrestricted and uncontrolled."

Inasmuch as the Alabama rail lines are connected directly and indirectly with some of the greatest systems of the country, the possible attitude of the new State Government is of more than ordinary interest. The principal working lines through this territory are the Western of Alabama, connecting between Atlanta and Montgomery for fast freight and mail to New Orleans, the Louisville & Nashville, the Atlantic Coast Line and the Seaboard Air Line; all of these will be interested and no doubt largely affected by the movement on the political chess board during the next six months.

FLORIDA

The railroad commission has issued the following orders:

(No. 120)—It is hereby ordered and adjudged, That the rules and regulations of the railroad commissioners of the State of Florida be, and the same are, hereby amended, as follows:

By substituting the following in lieu of Rule 7 of the "General Rules":

"7. In no case shall any railroad or common carrier, doing business wholly or in part within the State of Florida, advance or increase any special rates or other rates, demurrage charges, storage or wharfage charges, without first submitting the proposed increased rate of rates, demurrage, storage or wharfage charges to the railroad commissioners and receiving their approval."

(No. 121)—It is hereby ordered and adjudged, That the rules and regulations of the railroad commissioners of the State of Florida be, and the same are, hereby amended as follows:

By adding the following to the "Rules Governing the Transportation of Freight":

"26. At all of their agencies in Florida, railroads shall receive all freight offered, proper for transportation, and shall make the usual deliveries of freight to consignees (Sundays and legal holidays excepted) between the hours of 7 o'clock

a. m. and 5 o'clock p. m., provided that in cities or towns having less than ten thousand (10,000) inhabitants, according to the most recently published national census, the agent may take an intermission of one hour for dinner."

This rule to be effective on and after November 15, 1906.

(No. 122.)—It is hereby ordered and adjudged, That the rules and regulations of the railroad commissioners of the State of Florida be, and the same are, hereby amended by adding the following to the "Demurrage Rules":

"15. When a shipper makes written application to a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, for transportation within the State of Florida, stating in said application the character of the freight, the railroad company shall furnish same within four days from 7 o'clock a. m. the day following such application.

Or, when the shipper making such application specifies a future day on which he desires to make a shipment (of other than fruit or vegetables), giving not less than four days' notice thereof, computing from 7 o'clock a. m. the day following such application, the railroad company shall furnish such car or cars on or before the day specified in the application.

Or, when the shipper making such application specifies a future day on which he desires to make a shipment of fruit or vegetables, giving not less than two days' notice thereon, computing from 7 o'clock a. m. the day following such application, the railroad company shall furnish such car or cars on or before the day specified in the application.

For failure to comply with this rule the company so offending shall forfeit and pay to the shipper applying the sum of \$2 per car per day, or fraction of a day's delay after expiration of free time, upon demand in writing made within thirty days thereafter by the shipper.

Provided, however, That the collection of the demurrage herein authorized shall not deprive the shipper of his right to recover in any court of competent jurisdiction such damages as he may sustain by reason of the delay in furnishing cars.

Provided, further, That this rule does not alter, abolish, supersede, or repeal Rule 3 of the railroad commission's "Rules Governing the Transportation of Freight. This rule shall not be effective until December 5, A. D. 1906."

On December 3 the commission will give a hearing to consider the advisability of amending its rules and regulations as follows:

By adding the following to the "Demurrage Rules":

"16. A shipper, on whose order a car or cars have been placed for loading, shall be allowed forty-eight hours for the loading of such car or cars, computing time from 7 o'clock a. m., the day after such car or cars have been placed subject to the order of shipper, and thereafter a demurrage charge of not more than \$2 per car per day, or fraction of a day, may be assessed and collected on all such cars as have not been tendered to the railroad company with shipping instructions within said forty-eight hours; provided, however, that should the shipper fail to begin loading within forty-eight hours after the expiration of free time, the railroad company shall

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consider the car or cars released, and may assess and collect \$4 on each car, covering the demurrage then due.

Railroad companies shall not be compelled to furnish cars for future shipments to parties in default as to the payment of the demurrage charges, herein last provided for, until such demurrage charges have been paid.

If, after placing the car or cars required by this rule, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way prevent, obstruct or delay the loading of same, the shipper shall not be chargeable with the delay caused thereby.

When, by reason of delay or irregularity on the part of the railroad company in filling orders, cars are bunched in excess of the ability of the shipper to load, as indicated in his applications, the shipper shall be allowed separate and distinct periods of free time within which to load the car or cars specified in each separate application."

At the above named meeting you, the railroad companies, and common carriers doing business wholly or in part within the State of Florida, shall have an opportunity to be heard and to show cause, if any you have, why the proposed amendment should not be adopted.

The commission has fined the Seaboard Air Line Railroad \$1,000, adjudging it guilty of refusal to act as a common carrier for the Otter Creek Lumber Company.

GEORGIA

Several local rates have been reduced by the commission and the Southern Railway was directed to furnish ten cars a day for five days at Fayetteville, and five cars a day for five days at Woolsey, stations on the Atlanta and Florida branch, for the transportation of cotton.

The railroad commission, by a unanimous vote, denied the petition of C. A. Wickersham for a revision of the mileage tables of the Atlanta & West Point Railroad. By the revision of its tables, the road would have increased the mileage to all points along its line by at least 5 miles, and it would have increased its revenue and burdened its patrons by extortion by from 5 to 10 per cent.

In Circular No. 328 the commission rules: Storage Rule No. 2 is hereby amended by adding after the word "judge," in the fourteenth line of said Rule, the following:

"Provided, however, that on cars of coal containing 60,000 pounds or more, and loaded in cars the sides of which are 3½ feet, or more, high, and which do not contain more than two dumps, sixty hours' free time shall be allowed as above."

The following rule is hereby adopted as Storage Rule 13:

"If, upon arrival at destination of a car, the consignee named in the bill of lading should desire the same placed upon some side track which is located on another line of road, the railroad which brought the car to the destination named in the billing shall, upon receipt of direction so to do, as per Storage Rule No. 4, and within twenty-four hours after the receipt of such notice, deliver such car to the line upon which the designated side track is located. And if it be necessary, in reaching the designated side track, to pass over the tracks of two or more railroads, the initial line shall make delivery as above to its connection, and each succeeding line shall do likewise, that will cause the quickest and

most feasible delivery to the designated track, and in no case shall more than seventy-two hours be allowed in effecting such delivery.

"And the provisions of this rule shall likewise apply to any car which is loaded on a side track of one railroad to be transported to destination by some other line of road.

"For a violation of any provision of this rule the railroad company at fault shall pay to the consignee or party whose interest is affected the sum of \$1 per car per day for each day or fraction of a day such violation continues."

The following is hereby adopted as Storage Rule No. 14:

"Subject to the provisions of Freight Rule No. 23, each railroad company in this State is required to accept from any connecting road of same gauge any and all cars, proper for transportation, that may be tendered it by such connecting line, and shall, within twenty-four hours, exclusive of Sundays and legal holidays, after tender is made, place such car or cars at an accessible point for loading or unloading same, on any side track on its line that may be designated by order of the shipper or consignee at interest; provided, however, that no railroad company shall be required to place on its general delivery tracks any car that reached destination, or is intended to be forwarded over the line of another railroad.

"For a violation of any provision of this rule the railroad company at fault shall pay to the party whose interest is affected the sum of \$1 per car per day for each day or fraction of a day such violation continues."

This circular shall become effective on and after November 6, 1906, and repeals everything in conflict.

By order of the Board:

H. W. HILL, Chairman.

GEO. F. MONTGOMERY, Secretary.

INDIANA

The railroad commission in the case of the Indiana Veneer & Lumber Company et al. v. Baltimore & Ohio Railroad Company, has ruled:

It is further ordered, That the following, numbered from 1 to 9, are hereby adopted by the commission as the rules to govern car service in this State, and that the rules of the Indiana Car Service Association, as modified, changed, altered and corrected by said rules of the commission, may go into effect at all the stations of all the respondents in this State.

It is further ordered, That said rules are in the letters and figures as follows:

Rule 1. Railroad carriers, within 24 hours after the arrival of freight, shall give legal notice to the consignee of arrival, and shall place cars for unloading, except that 24 hours may be allowed for placement in cases set out in Rule

3 of Indiana Car Service Rules. Notice must contain weight and amount of freight and other charges, and, if carloads, letters or initials and numbers of cars, and, if transferred in transit, the number and initial of original car, net weight, and amount of freight charges due on same. Legal notice may be either actual or constructive; actual when delivered in writing to the consignee in person, or left at his place of business; constructive, when deposited in the post office of the city or town where consignee resides. Telephone or other notice may be used, by written agreement, in place of legal notice.

Rule 2. A charge of one dollar a day or fraction of a day shall be made on each car placed for loading or unloading after the expiration of forty-eight hours from 7 a. m. next following notice of arrival and placement or offer to place.

Rule 3. In cases where actual delivery of cars cannot be made on account of some act of the shipper or consignee, legal delivery will be considered to have been effected when the carrier offering such cars would have made delivery had not said act of the shipper or consignee prevented.

Rule 4. When by reason of delay or irregularity of the carriers in filling orders, cars are bunched in excess of the ability of the shipper, as indicated by his application, to load within the free time allowed by these rules, the shipper shall be allowed separate and distinct reasonable periods of free time, as shown by his application for cars, within which to load cars so delivered, provided the shipper must employ during business hours all his usual and ordinary facilities to load the cars.

Rule 5. When on account of delay or irregularity of transportation or switching, cars are bunched and delivered to consignee beyond his ascertained ability to unload within the free time prescribed in these rules, he shall be allowed by the carrier such additional reasonable free time as may be necessary to unload cars so in excess, by the exercise of due and usual diligence on the part of the consignee; provided, the consignee must employ during business hours all his usual and ordinary facilities to unload the cars.

Rule 6. Whenever, on account of the severity of the weather, it is impossible, or impracticable, during business hours of free period, to secure or use means of loading or unloading, or whenever, on account of the severity of the weather, removal during business hours of free period would cause material damage to the freight, reasonable additional free time shall be allowed.

Rule 7. In every case where the shipper makes an affidavit setting out the facts which entitle him to additional free time under rules 4, 5 or 6, or showing that he was prevented from loading or unloading within the free time allowed on account of some specified fault of the carrier, it shall be the duty of the carrier's car service manager to promptly investigate the complaint, and said manager may order the account for car service to be cancelled. If, however, said manager shall insist upon payment the papers, together with said affidavit, must be presented to the division superintendent or local freight agent of the carrier, who shall decide said claim on its merits. Until such investigation and decision is made, car service charges and penalties shall not be enforced in such cases.

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Rule 8. In all calculations of free time mentioned in these rules, the following days shall be excluded: Sunday, January 1, February 22, May 30, July 4, the first Monday in September, all general election days, Thanksgiving Day as appointed by the President of the United States or the Governor of Indiana, and December 25. When either of such days comes on Sunday the following Monday will be excluded.

Rule 9. These rules shall prevail at all railroad stations and sidings of the respondent carriers in this State, and shall be published by posting at said stations, as required by law.

It is further ordered, That each of said respondents shall cause said rules to be printed in large type and shall have the same posted up in a conspicuous place in each of their depots accessible to the public, or shall keep the same on file in each of said depots for the inspection of all interested persons, in which case a notice shall be printed in large type and posted up in some conspicuous place in said depots, notifying the public that copies of said rules are kept at said station for public inspection and can be seen by any person interested on application to the freight agent.

These rules become effective December 1.

The opinion written by Commissioner Wood says:

The courts have settled that carriers have a right to charge for the use of cars after shippers have been afforded an opportunity to unload. It is clear also that when the usage of the carrier, known to shippers, was to make such charge that the charge became a part of the contract and could be so recovered. It seems to us that these rules should go further. The only legitimate use of cars is transportation. The cars are made for transportation, and not for warehouses. Neither the carrier nor the shipper, because the rights of other carriers and other shippers intervene, have any right to divert cars from transportation, except, of course, the usual necessary time to load and unload them. "In this matter the public have rights paramount to those of any individual, and the business of the public carrier must be so conducted as to subserve the general interest and convenience."

The Indiana act has made it the duty of the commission, after complaint filed, "to adopt all necessary regulations to govern car service"; to enforce reasonable and just charges for the railroad company for the use or transportation of loaded or empty cars, and to enforce reasonable rates for the railroad companies "for storing and handling of freight and for the use of cars not unloaded after 48 hours' notice to the consignee, not to include Sundays or legal holidays"; and to "make such corrections, alterations, changes or new regulations," to operate for the benefit of all persons similarly situated with the complaining party, and on the lines of the railroads complained of, "as may be necessary to prevent injustice or discrimination."

It must be noted that the Legislature has suggested, if not established, 48 hours as the free time, a period corresponding with the customs of business and the car service rules generally prevailing in this country, but that it is intended also that notice to the consignee shall be given, and Sundays and legal holidays shall be excepted. We have not attempted, therefore, to change the free time of the Indiana car service rules, but

we have carefully provided how notice shall be given, adding telephone notice by agreement, to expedite business, and we have set out in the rules, so that there could be no mistake, the holidays excepted.

As we understand the evidence, certain exceptions to demurrage charges are made, at least sometimes made, in practice, although not mentioned in the rules. Now, it seems to the commission that it is best to set out specifically so that all parties may have a clear understanding and a square deal exactly what these exceptions are. Hence, we have provided for weather conditions and the bunching of cars on the one side, and, on the other hand, have regarded placement as made where the fault of the consignee prevented placement.

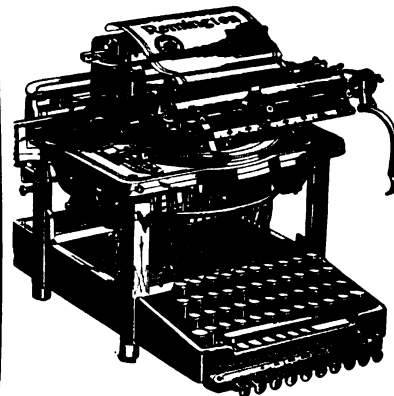
As to reciprocal demurrage, we have every reason to believe from the information at hand that the General Assembly intended to give the commission power to establish reciprocal rules to prevent discrimination and delay. But the terms of the act in the light of the rules of statutory construction render it so doubtful whether the commission can make such rules that we feel it is best to relegate this matter to the General Assembly, now about to convene. If the representatives of the people of the State desire to pass such an act it would become effective long before an appeal from the decision of the railroad commission could be decided.

Rule 7 of the commission's rules is a new rule, which does not obtain elsewhere, so far as we have been able to find, and we have before us all the car service rules of the different associations and States of this country. It is made to prevent the manifest injustice which even the emergency of car service rules should not sanction, of enforcing, without investigation, the actual payment of a dollar not owing and not due. It is made in the interest of harmony between carrier and shipper, to obviate the rankling consciousness of an injustice done, exciting to acts of greater injustice. It makes the affidavit of the shipper a bar to the collection of demurrage until both the manager and the carrier have finally and fully investigated the claim. It is expected that its operation will prevent the friction and feeling the car service charges have brought about. It is certainly far better than the present arbitrary system, and inasmuch as 95 per cent. of the cars move without car service charges, it will have no appreciable effect on the expedition of business.

The scarcity of cars to do the business of the country is the most difficult problem of the business world. It is perplexing to the carrier and harassing to the shipper. While it is the fault of some of the railroad carriers that with the accumulation of business and profits they have failed to look forward and keep up with the development of the country, it is not now a question of who is to blame, but a grave condition requiring the utmost efforts of carrier and shipper to solve without great loss. In the common interest of such a condition, the commission feels that it is not out of place in a formal opinion to appeal to the shippers of the State to load and unload and release cars furnished to them with all possible dispatch. In considering these questions, in view of these conditions, the commission has performed the most difficult duty it has yet encountered, namely, to adopt rules which will keep the products and merchandise of the country moving, and at the same time prevent, as far as possible,

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A hearing will be given on the charges preferred by the National Refining Company against the railroads on December 17, when, it is believed, the matter will be definitely settled.

IOWA

Commissioner N. S. Ketcham is considering an application for a zone rate on coal so that the Iowa coal fields could compete with the Illinois coal fields for the Western trade. As it is the Illinois coal is shipped through Iowa to Omaha, being interstate traffic, at a lower rate than Iowa coal can be shipped from the Iowa coal belt to Omaha, a much shorter distance. Since the coal in Iowa is all in one belt it was proposed to make a rate covering the distance from that belt to Omaha and Sioux City that would be much lower than the rate otherwise. The object being to give an inducement for the transportation of coal west to Omaha and Sioux City or Western points while leaving the same rates in effect to other points. The Attorney General held that this would not be illegal.

The assembling rate proposition has come up on the petition of the poultry men of Clarinda for an assembling rate covering points a short distance away from Clarinda, so as to facilitate the assembling of poultry to Clarinda for re-shipment. Just such rates and arrangements as this are now in force and effect in Missouri, where a great deal of produce and poultry and eggs is shipped and is gathered at central points in that way. Just such a rate could be put in at every important point.

The assembling rate involves questions similar to the joint rate proposition. It is wanted to cover shipments that must be made over two roads, the sum of two local rates being too high to permit the business being carried on. For instance, live poultry in coops in less than car load lots goes as first class freight. The rate for a 100 pound shipment for 5 miles is 14 cents and for 25 miles 17 cents. If a shipment had to be made 5 miles on one road and then 25 miles on another to get to Clarinda the total rate would be the total of 14 and 17 or 31 cents, which is a higher rate than the business will stand. The rate for a shipment of 30 miles on one line of road is but 17.6 cents, and something approaching this is what is wanted.

The Illinois Central has decided to re-establish the old distance rate on milk and cream from Iowa to Chicago, Kansas City, St. Joseph, Omaha and other large centers, and thus discontinue the discrimination against the smaller Iowa creameries. The work of getting a stop put to the discriminations was taken up by State Food and Dairy Commissioner H. R. Wright a few weeks ago. It was shown then that a shipment of a 100 pound can of cream from Fort Dodge to Dubuque was charged a rate of 49 cents, and another can on the same train could be shipped on from Fort Dodge through Dubuque to Chicago for but 40 cents. This Chicago rate was a special rate and applied with equal provisions to St. Joseph, Kansas City and other large cities, and was a direct discrimina-

tion against the Iowa creameries and in favor of the creameries outside of the State. Under the new schedule the rate from Fort Dodge to Dubuque will remain as it was before, 49 cents for a 100 pound shipment of cream. But the rate from Fort Dodge to Chicago under the new rate will be 63 cents for a 100 shipment, thus removing the discrimination against Dubuque. This new rate will go into effect December 5, as under the new law thirty days' notice must be given to the Interstate Commerce Commission before the rate can be put into effect.

KENTUCKY

The Hon. Thomas H. Paynter and Col. Bennett H. Young, attorneys for the Commonwealth of Kentucky, have filed in the office of the Clerk of the United States Circuit Court for the Eastern District of Kentucky, at Frankfort, the joint and several answers of C. C. McChord, A. T. Siler and McD. Ferguson, individually, and as constituting the Railroad Commission of Kentucky, to the five injunction suits instituted by the Louisville & Nashville, Cincinnati, New Orleans & Texas Pacific, Southern Railway, Illinois Central, and Nashville, Chattanooga & St. Louis railroads. The petition of the Louisville & Nashville Railroad Company covers seventy-four typewritten pages, and is much more voluminous than that of any of the others. It raises all the questions relied upon by the other railroads, and in addition thereto many other questions. The commissioners' answer to the petition of the Louisville & Nashville Railroad Company covers all the points contained in the answers to the petitions of the other roads. The answer begins with somewhat of a criticism of this petition by saving all exceptions to what the defendants denominate "the fallacious arguments, the many errors, uncertainties and imperfections in the bill of complaint."

LOUISIANA

Among the recent orders of the railroad commission are the following: Railroad Commission of Louisiana. Order No. 608—At a general session of the Railroad Commission of Louisiana, held in its office in the capitol at Baton Rouge, La., on November 9, 1906, it was ordered:

That the following change in and addition to the uniform bill of lading, as adopted by the commission for use in the State of Louisiana, may be made by all railroad companies operating in the State.

In the lower left hand corner on the face of the uniform bill of lading add the following: "Received \$— to apply on prepayment of charges described above."

This change was granted at the request of the Vicksburg, Shreveport & Pacific Railway Company, and is now made a general ruling by this commission.

Glassell Brothers and J. W. Dixon v. Texas & Pacific Railway Company, No. 697—Discriminations against plaintiffs by not placing cars for loading at gin houses. Filed October 22, 1906, heard November 8, 1906.

After a full hearing in the above case, the commission believing that the shippers along the line of a railroad are entitled to equal, reasonable and adequate facilities for loading or unloading cars with products of manufacturers located on the lines of such railroads, and finding that the Texas & Pacific Railway

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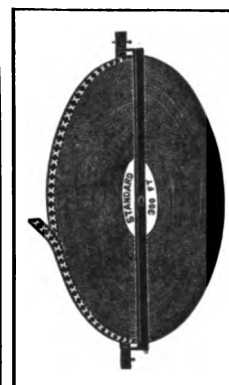
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Company is placing cars at the gins of some shippers along its road, and refusing to place them for others, it is now, therefore, ordered, that the said Texas & Pacific Railway Company be and is hereby required to place cars for loading at the platforms or gin houses of all shippers located on the line of said railway, and specially the complainants in this case, such as they have been doing in the past, without discrimination or favor.

Railroad Commission of Louisiana v. St. Louis, Iron Mountain & Southern Railway Company, Texas & Pacific Railway Company, St. Louis, Watkins & Gulf Railway Company, Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Railway & Navigation Company, and Chicago, Rock Island Pacific Railway Company. No. 702—Rates on logs from points fifty miles or less to Alexandria; filed October 22, 1906; heard November 8, 1906.

A full hearing in the above case has established the fact that the St. Louis, Iron Mountain & Southern Railway Company, and all other railroad companies named as defendants, have into Alexandria reconsignment or "milling in transit" rates, which appear to be reasonable and fair to shippers. The commission has repeatedly recognized that "milling in transit" rates on lumber, as well as other products produced in large quantities in the State and shipped for the purpose of manufacture to certain milling points, are necessary to the conduct of large industries, and when fair and reasonable, both as to the rates themselves and as to the requirements of conditions under which they are made, should be protected and maintained. The commission can see nothing unreasonable in the rates which have been established by the defendant companies into Alexandria, and it is therefore ordered that the case be dismissed.

The commission will, at its next session, to be held in Baton Rouge, on Tuesday, December 3, consider the adoption of the following rules and weights relative to shipments of lumber between points in Louisiana:

Where a mill has its track scales and a shipment of lumber is intended for a point where there are no track scales intermediate, the weights furnished by the mill shall be the basis of the assessment of freight charges, provided the weighmaster, in accordance with the laws of the State of Louisiana, is a regular sworn weighmaster, and the railroad company shall have the right to inspect the scales at any time, or a representative of the railroad commission; and provided further, that the scales shall be tested at least twice a year by a competent scale man.

When there are no track scales, either owned by the mill or by the railroad company over whose railroad the cars containing the lumber shipments shall pass, then the shipper shall submit a certified copy of the invoice of the lumber, minus the prices, showing the number of feet each kind of lumber loaded therein, and the weight of the car shall be ascertained by using estimated weights as prescribed below.

ESTIMATED WEIGHTS OF LUMBER, PER 1,000 FEET.

	Lbs.
Ash, green.....	5,000
Ash, seasoned.....	4,000
Basswood, hemlock and white pine, green.....	4,000

Basswood, hemlock and white pine, seasoned.....	3,000
Chestnut, cottonwood and cypress, green.....	5,000
Chestnut, cottonwood and cypress, seasoned.....	3,000
Elm, hickory and oak, green.....	6,000
Elm, hickory and oak, seasoned.....	4,500
Gum, green.....	5,000
Gum, seasoned.....	3,500
Poplar, green.....	4,000
Poplar, seasoned.....	3,000
Yellow pine, viz.:	

Green, rough, under 6 inches in thickness.....	5,000
Green, rough, 6 inches and over in thickness.....	4,500
Green, dressed.....	4,000
Seasoned, rough.....	4,000
Seasoned and dressed, ceiling, siding and partition.....	2,000
Seasoned and dressed, flooring, roofers, shiplaps, casings and jambs.....	2,500
Seasoned and dressed, N. O. S.....	3,000
N. O. S., green.....	6,000
N. O. S., seasoned.....	4,000

The commission proposes the above rules and estimated weights for the basis of consideration at the hearing and requests all interested parties to present their views at the hearing, or in writing before the hearing, as above set forth.

W. M. BARROW, Secretary.

MINNESOTA

Distributing freight rates from the twin cities, agreed to between the State Railroad Commission and the committee representing all the railroads in Minnesota, went into effect November 15. The average reduction is 20 per cent. in merchandise rates. The reduction affects all stations in Minnesota and on the Northern lines it affects practically all of North Dakota.

MISSISSIPPI

Judge Niles in the Federal Court has granted a temporary injunction restraining the Mississippi railroad commission from enforcing an order promulgating a rate of 4½ cents per hundred on grain and grain products between Vicksburg and Laurel. The restraining order was applied for by the Alabama & Vicksburg Railroad, the chief contention being that the rate was violative of the Interstate Commerce Law relative to continuous mileage rates.

The Jackson Cotton Oil Company has filed a complaint with the commission that the Y. & M. V. Road has failed to place cars at Utica to handle cottonseed shipments; that there has not been a car furnished at Utica for a week or ten day, and the cottonseed is literally burning up in the seed houses. General Freight Agent Cameron, of the Illinois Central, writes a letter of inquiry concerning his suggestion made last September that Mississippi adopt the Southern Classification. In reply the commission states that the matter is still under advisement. A general revision of local freight rates is contemplated.

MISSOURI

In the Burlington maximum freight rate case, at Kansas City, W. R. Stubbs declared that the total cost of the Burlington line in Missouri could not have exceeded \$25,000 per mile. Bernard Corrigan said the outside limit of cost was \$30,000 per mile. E. M. Fisher, of St. Paul, an expert accountant, testified that the Burlington freight rates in Missouri were from 20 to 25 per cent. higher than on the same road in Illinois.

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C. L. Sturgis, auditor of the Burlington, declared that, taking into consideration the cost of constructing the railway, the cost of maintenance and equipment, the freight rates were in general low, and in some cases where they were affected by the Missouri maximum rate law, almost prohibitive. Mr. Sturgis estimated that the decrease which would have been occasioned had the rate law been in effect in 1904 and 1905, would have been more than \$250,000.

"In 1904," he said, "it would have been \$173,770.44, and in 1905 it would have been \$171,122.07. From this it will be seen what an enormous reduction the maximum rate law makes."

The following assertions were made by the Burlington in writing:

"It costs seven times as much to handle local freight as it does to handle through freight, for the reason that one clerk can, in one minute, bill a car of freight to go 1,000 miles, whereas it may take the same clerk four hours to bill a carload of local stuff out.

"Through cars carried in a given time an average of 32 tons per car, while local cars carried less than 5 tons, it being impossible to load them more heavily, as the train men have to get access to the small packages for the way stations.

"Local freight engines run only 40 per cent of the distance traveled by through freight engines, and consequently the train crews work only 40 per cent. of the length of the through run. Local freight men get higher wages than through freight men and terminal charges amount, as shown by complete returns, to 87 cents per ton for State business. This means the charges at the loading and unloading ends of the journey."

In contradiction of this, Mr. Ladd, for the State, directed Expert C. S. Ludlum, of New York, to say what the Government reports showed to have been the average for every ton of freight carried in the United States during the year 1905, over a mile. "In other words," said Mr. Ladd, "the average ton for the entire country for an entire year."

"One dollar and seven cents," was the answer, which plainly surprised Attorneys Spencer and Hagerman, for the Burlington road.

"Tell us, if, in your opinion, Mr. Ludlum," resumed Mr. Ladd, "earning \$1.07 per ton, railroads could continue to do business, in view of the statement, taken for the sake of argument, that it costs 87 cents per ton to handle freight at the terminals?"

"They could not. That proves that the terminal charges are not 87 cents per ton. I do not think they are one-tenth of that."

After some figuring it was shown that the freight of the United States is carried for a fraction under 5 cents per 100 pounds, local, through, carload, less than carload and all classifications.

OHIO

Columbus shippers were much interested in the supplement to the switching tariff of the Norfolk & Western which has been filed with the State Railroad Commission.

The filing of this supplement came about through a complaint filed by the Shippers' Association for Jacob Rapp in regard to the closing of the East Main street terminals of the railroad to consignments from other roads.

The new tariff throws open the terminals to both intrastate and interstate shipments, the former going into effect

November 13 and the latter December 5. The switching charge from all lines entering Columbus is placed at \$2 a car except from the T. & O. C. and the Hocking Valley, the switching charge from these roads to the East terminals being \$2.50 a car.

Shippers of the city believe that the filing of this tariff will result in all other yards and terminals in Columbus being placed within the switching district.

Ohio shippers, especially those having to do with coal, lumber and fruits and vegetables, are awaiting with much interest the decision by the State Railroad Commission on the complaints against the present car service rules, filed by the Ohio Shippers' Association.

All the testimony in the case was in Saturday and the commission held the case open pending the filing of certain schedules by the railways which will be filed with the commission in ten days. These will complete the record and the arguments will then be made.

The testimony in the case is quite voluminous, over forty witnesses having been examined. It will take some time for the commission to go over all this testimony and a decision is not expected for some days. It is believed that the shippers will obtain some concessions from existing car service rules, which now make forty-eight hours flat free time on all commodities.

Formal complaint was filed with the commission Saturday by the National Petroleum Association, comprising independent refiners, charging that forty Ohio railways are maintaining discriminatory freight rates on oil that operate to the advantage of the Lima refinery of the Standard Oil Company.

In the case of the Windisch-Muhlhauser Brewing Company against the Norfolk & Western Railway Company, called by the Railroad Commission of Ohio, recently, the same was dismissed without prejudice for want of sufficiency of definiteness in the character of the complaint.

SOUTH CAROLINA

The railroad commission has arranged for a hearing for the freight men of the railroads for November 27 in reference to the recent letter of the commission regarding local tariffs. It is expected that L. Green, of the Southern; C. R. Capps, of the Seaboard Air Line; R. A. Brandt, of the Atlantic Coast Line, and Ernest Williams, of the Charleston & Western Carolina will be present. The commission a few days ago sent to all the lines doing business in this State a letter stating that the tariffs contained in the annual report of the commission must, after the 1st of December, be considered the tariffs prevailing in this State, and that the letter was formal notice to that effect. The representatives of these railroads will be heard on the 27th and permitted to state any objections they may have as to this order.

TEXAS

The notice of hearing issued by the railroad commission to consider the matter of the reduction of sleeping car fares in Texas was significant in the fact that it held the railroad companies entirely responsible for the sleeping car service in this State and utterly ignored the Pullman, or only sleeping car company. The hearing was fixed for November 27, and it provides that the commission shall first take jurisdiction of the sleeping car

service and that the railroads must maintain their present service, unless authorized to discontinue or modify it by an order of the commission or put on additional service if the commission so orders. The proviso that the present service must be maintained was to prevent the railroads from withdrawing any of the present sleeping car routes, provided the fares for such service were reduced in this State. The railroads were ordered to continue the present sleeping car runs, and if an order making a reduction should be made the railroads would have to stand it and there could be no withdrawal of the accommodations.

As a result of this arrangement and the ignoring of the company owning the sleepers it is more than probable that when the hearing is called on November 27 the railroads will enter a disclaimer of something akin to a "misjoinder" and allege that they have no control of the sleeping car rates, and that in order to reduce or regulate same the commission must cite the owning company, which happens to be the Pullman Company. This last is sure to present a most interesting point, as it is known that the railroads claim that they have no control over the sleeping car rates; that the Pullman Company fixes them for Texas and every other State and interstate travel, as well as international travel. What effect this contention will have with the commission cannot be apprehended, though it is presumed that the

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commissioners considered that important point before issuing their order proposing the reduction.

Whatever order the commission may make in the premises, whether it be directed against the railroads as contemplated or revised and issued to the Pullman Company, it is thought to be sure of being tested in the courts. It is the general impression that the railroads would disclaim in the courts if they were ordered to reduce sleeping car charges and that the Pullman Company would question the commission's power before submitting to any reduction.

Truck and fruit growers in Texas are involved in a controversy with express companies. The latter were authorized by the State Railroad Commission to put a schedule of estimate weights in effect to save time in handling.

The shippers assert that the estimates are only 70 per cent. of the actual weights. The carriers say they are 75 per cent. Under the new rate law the express companies have given orders to all agents to handle the fruit and truck packages on actual weights. It is considered a discrimination to allow one class of farmers to ship at 75 per cent. of the actual weight and force another class to pay the full freight.

The railroads claim that it is next to impossible to collect demurrage from the shipper of cotton where the cotton cars are delayed at compresses and that the commission should consequently amend its rules so as to provide that the compress shall pay the demurrage and not the shipper.

Vice-President and General Manager W. E. Green and Assistant General Freight Agent R. C. Fyfe, of the Cotton Belt, made this argument to the railroad commission, and it is held under advisement.

VIRGINIA

Richmond—The State Corporation Commission is hearing the last evidence in the uniform freight rate inquiry which has been going on with brief intermissions since last spring, and which will soon go to the court.

The commission cited all the principal lines in the State to show cause why a uniform freight rate should not be promulgated. The railroads contend that the commission has no right under the constitution to regulate freight rates and also that the earnings of the companies will not justify a reduction.

It is believed that the commission will decide against the companies, but in any event the case will be ultimately taken to the United States Supreme Court of Appeals for final adjudication.

The Seaboard Air Line intends to expend about \$100,000 in improving its shipping facilities in Richmond.

WISCONSIN

The State Railroad Rate Commission has determined that the equality clause of the railroad law does not operate against the encouragement of new industries in the State of Wisconsin.

This is the effect of a decision announced today in the matter of the Wisconsin Central Railroad, in charges on construction material for manufacturing plants. The decision is one of great length and it fully discusses the law with reference to the quality of rates provisions. The decision rests upon the point of the right of the carriers to make reduced rates, not open to the general public, on machinery and material used in the construction of manufacturing plants.

In the case of the Loftus-Hubbard Elevator Company against the Wisconsin Central, the commission decided: "It is our determination that the requirement of a minimum weight of 20,000 pounds for shipments of hay in cars 33 feet 6 inches by 8 feet 3 inches by 7 feet 2 inches is reasonable and fair. We have no proof that the Wisconsin Central Railway Company uses smaller cars in the hay traffic, to any appreciable extent. But in view of the fact that the company still carries about 750 common box cars, which are less than 33 feet 6 inches in length, on its equipment register, and in further view of the testimony on the part of the company, with reference to its attitude regarding the furnishing of smaller cars, unless the shipper expressly gives directions to the company to the contrary, we infer that some of the 750 cars may still be occasionally assigned to the hay traffic. Other carriers doing business in Wisconsin have established a lower minimum than 20,000 pounds for cars less than 33 feet 6 inches long, and the Western Trunk Line Rules, to which the Wisconsin Central Railway Company is subject, also provide lower minimum weights for smaller cars. We, therefore, further determine and order that for cars of less dimensions than 33 feet 6 inches by 8 feet 3 inches by 7 feet 2 inches, whether such cars are owned by the Wisconsin Central Railway Company or whether they are cars received by it from connecting railways, the Wisconsin Central Railway Company shall be bound by Western Trunk Line rules, as follows:

Cars 30 feet in length and under	16,000 lbs.
Cars over 30 feet to and including 32 feet	18,000 lbs.
Cars over 32 feet, to but not including 33 feet 6 inches	19,000 lbs.

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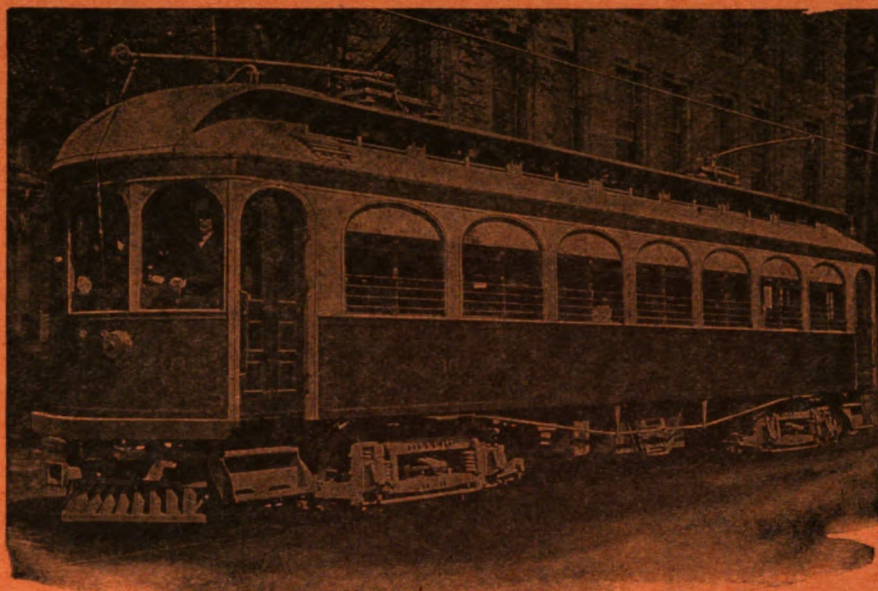
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